CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 8

NATIONAL SURETY COMPANY ET AL.,
PETITIONERS,

vs.

VALERIA E. CORIELL, MORRIS WHITE, INC.;
IRVING TRUST COMPANY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 23, 1932

CERTIORARI GRANTED MAY 16, 1932

(36,541)

(36,541)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 8

NATIONAL SURETY COMPANY ET AL.,
PETITIONERS,

vs.

VALERIA E. COREILL, MORRIS WHITE, INC.;
IRVING TRUST COMPANY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Record from the district court of the United States for the southern district of New York	1	1
Bill of complaint, verified April 6, 1931	1	1
Notice of appearance of defendant, dated April 6, 1931	11	7
Answer of defendant, verified April 6, 1931	12	8
Order appointing Irving Trust Company temporary receiver of Morris White, Inc., dated April 3, 1931	14	8
Order of Judge Knox requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, dated May 12, 1931	24	15
Stipulation that receiver gave due notice of hearing pursuant to terms of order of May 12, 1931	25	16
Petition of Irving Trust Company, upon which the order of Judge Knox was based, requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, verified May 12, 1931	26	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 9, 1932

INDEX.

	Original	Print
Exhibit 1—Annexed to the petition of Irving Trust Company, upon which the order of Judge Knox was based, requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, being the offer of Lily White, dated April 29, 1931	30	18
Exhibit A—Annexed to the petition of Irving Trust Company, upon which the order of Judge Knox was based, requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, being a certificate from the accountants stating the amount of liabilities of the defendant corporation as shown upon its books on the day of the appointment of the receiver	54	32
Exhibit 2—Annexed to the petition of Irving Trust Company, upon which the order of Judge Knox was based, requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, being a resolution of the creditors' committee approving the offer of Lily White	55	33
Exhibit 3—Annexed to the petition of Irving Trust Company, upon which the order of Judge Knox was based, requiring creditors to show cause why the offer made by Lily White to purchase all of the assets of Morris White, Inc., should not be accepted, being an instrument duly acknowledged by Michael Hollander, chairman of the creditors' committee, submitting himself to the summary jurisdiction of the court	57	33
Order authorizing receiver to pay judgment of Pfister & Vogel Leather Company, dated May 14, 1931	59	34
Minutes on the hearing before Judge Knox held on May 8, 1931	62	36
Minutes on the hearing before Judge Knox held on May 25, 1931	77	47
Minutes on the hearing before Judge Knox held on May 26, 1931	78	48
Minutes on the hearing before Judge Knox held on May 27, 1931	93	59
Testimony of Morris White	175	118
Affidavit of Charles H. Tuttle in opposition, sworn to May 27, 1931, submitted and filed May 28, 1931. The appellees reserve the right, by agreement of all parties, to object on the argument of the appeal that the affidavit of Charles H. Tuttle was submitted and filed after the decision was rendered by Judge Knox	200	135

	Original	Print
Affidavit of T. M. Garrison in opposition, sworn to May 26, 1931, submitted and filed May 28, 1931. The appellees reserve the right, by agreement of all parties, to object on the argument of the appeal that the affidavit of T. M. Garrison was submitted and filed after the decision was rendered by Judge Knox	205	137
Decree making the receivership permanent, dated June 3, 1931	211	141
Stipulation of The Morris White Handbags Corporation and Morris White submitting themselves, etc	221	148
Order enjoining Morris White from violating terms, etc.	223	149
Decree of Judge Knox approving offer of Lily White, dated June 15, 1931, being the decree appealed from	226	151
Consents of the Government of the United States and of Morris White and of Lily White to entry of the decree of June 15, 1931	232	155
Notice of appeal from decree of June 15, 1931	237	157
Petition for allowance of appeal from decree of June 15, 1931	240	158
Order allowing appeal from decree of June 15, 1931	241	159
Assignment of errors	242	160
Citation (omitted in printing)	248	
Clerk's certificate (omitted in printing)	249	
Proceedings in United States circuit court of appeals for the second circuit	251	164
Opinion, Manton, J.	251	164
Clerk's certificate (omitted in printing)	257	
Decree	259	175
Order granting writ of certiorari	260	175

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. No. E 59-126

VALERIA E. CORIELL, Complainant,

against

MORRIS WHITE, INC., Defendant

BILL OF COMPLAINT—Verified April 6, 1931

The complainant, a citizen of the State of New Jersey and a resident of the City of Newark, Essex County, State of New Jersey, brings this bill of complaint on her own behalf and on behalf of all other creditors of the above-named defendant similarly situated who may join in the prosecution of this suit, and thereupon complains and alleges:

First. That this is a suit of a civil nature in equity between citizens of different states and wherein the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00).

Second. That complainant is a citizen of the State of New Jersey and is a resident of the City of Newark, Essex County, State of New Jersey.

Third. Upon information and belief that defendant is a [fol. 2] corporation organized and existing under and by virtue of the laws of the State of New York and has its principal place of business at 621 Sixth Avenue in the Borough of Manhattan, City of New York, within the Southern District of New York, and is a resident of the City, County and State of New York in the said district.

Fourth. Upon information and belief that the object for which defendant was formed and the business it at all times has been engaged in was and is the manufacturing of fancy leather goods, both directly and through operating subsidiary corporations.

Fifth. Upon information and belief that the business of the defendant and its subsidiary corporations has been conducted successfully and prosperously since 1926, and was a growing and profitable business up to about a year ago. That owing to the business depression affecting industries generally in this country and the consequent diminution in demand for the products manufactured by defendant and its subsidiary corporations, the volume of business conducted by defendant has been diminished and as a result thereof a very substantial part of defendant's assets has become tied up in its inventories.

Sixth. Upon information and belief that the assets of the defendant corporation substantially exceed its liabilities; that the books of the defendant show, as of January 31, 1931, assets in excess of Four Million Dollars ($4,000,000.00) and liabilities of approximately One Million Dollars ($1,000,000.00); that the liabilities of defendant imme- [fol. 3] diately due and payable are, however, in excess of its quick assets available for payment of same.

Seventh. Upon information and belief that for several months past the bank and merchandise creditors of the defendant have cooperated with defendant in extending to it new credit in order to enable defendant to carry on its operations. That the large majority of the creditors of defendant in number and amount expressed their willingness to extend the time of payment of the indebtedness owing to them by defendant and to subordinate their respective indebtedness to indebtedness created for new money and new merchandise. That two of defendant's creditors have refused to work in harmony with the remaining creditors of defendant and one of said creditors on or about April 1st, 1931, obtained a judgment against defendant in the sum of approximately Twenty-five Thousand Dollars ($25,000) and that execution upon said judgment has been lodged with the Sheriff of New York County. That by reason of the action taken by such creditor the attempts of defendant to carry on its business have been defeated and defendant will be unable under existing conditions to secure sufficient funds and new merchandise to meet its necessary current and operating expenses and to liquidate its past due indebtedness or its indebtedness as to becomes due from time to time.

Eighth. Upon information and belief that the Sheriff of New York County has made or is about to make levy upon the assets of defendant, upon the execution aforesaid; that [fol. 4] certain of the other creditors of defendant, fearful of the waste of its assets by reason of any executions, are pressing their claims for payment and threatening to bring suit upon the same and threatening to attach the property of the defendant; that such action on the part of the creditors will result in further judgments, executions and seizures by sheriffs or other like officers and forced sales of the property of the defendant which would cause and create irreparable injury and loss to the defendant and to its creditors.

Ninth. That unless a receiver or receivers be at once appointed to take charge and possession of the property and assets of the defendant, the defendant will be subjected to a multiplicity of suits and conflicting litigation in this and other courts and its assets will be dissipated and sacrificed; some creditors will secure preference over other creditors; defendant's business will be interrupted and destroyed and the value of its property and assets generally diminished and impaired.

Tenth. Upon information and belief that at a forced sale resulting from attachment or other legal proceedings by creditors the value of the defendant's assets which as aforesaid greatly exceed its liabilities, would be very largely impaired, and the result would be disastrous to the creditors of said defendant and the protection which plaintiff has by reason of the value of the property of the defendant would be irreparably injured and destroyed.

Eleventh. Upon information and belief that if on the other hand the said properties of the defendant can be pre- [fol. 5] served and administered by this court and the business of the defendant continued by a receiver or receivers to be appointed by this court, then the value of the said assets which in a substantial measure is dependent upon the business of the defendant corporation being continued and the liquidation of the said assets at other than forced sale, will be maintained and the rights of the creditors protected.

Twelfth. That it is necessary for the protection and preservation of the rights and equity of plaintiff and other

creditors of the defendant and the assets of the said defendant that the properties and business of the defendant be preserved and administered in this suit through a receiver or receivers to be appointed by this court; that such appointment is necessary because said defendant is now unable to meet its matured and immediately maturing obligations and it will for some time in the future be unable to meet the same either from its assets or from the proper and reasonable use of its credit.

Thirteenth. That heretofore on or about December 12, 1930, defendant duly made its promissory note in writing dated on that date wherein and whereby it promised to pay to the order of New Jersey National Bank and Trust Company, on demand, the sum of Forty-five Thousand Dollars ($45,000.00); that payment of said note has been duly demanded but that no part thereof has been paid except the sum of Seventeen Thousand One Hundred Dollars ($17,100.00), leaving a balance due and owing upon said note of Twenty-seven Thousand Nine Hundred Dollars ($27,900.00) [fol. 6] with interest from March 31, 1931. That said New Jersey National Bank and Trust Company is a national banking association duly organized and existing under and by virtue of the laws of the United States of America and has its principal place of business in the State of New Jersey and is a resident of said state; that said New Jersey National Bank and Trust Company prior to the commencement of this action, duly transferred, assigned and delivered said note to plaintiff and plaintiff is now the holder thereof.

Fourteenth. That plaintiff as a creditor of defendant has no adequate remedy at law and brings this bill on behalf of herself and all other creditors of the defendant similarly situated who may come in and contribute to the expenses of this suit.

Wherefore the complainant prays for equitable relief as follows:

(1) That this court will forthwith appoint a receiver or receivers of all and singular the property and assets of every nature, wheresoever situated, held, owned or controlled by the defendant, with full power and authority to

take the same into his or their possession, with such powers as this court may from time to time grant, and for that purpose the power to incur such expenses as may be necessary or advisable in connection therewith; to purchase for cash or on credit such merchandise, supplies, material or other property as may be necessary or advisable in connection with the administration of the assets of the defendant; to sell in the regular course or conduct of business or otherwise all or any part of the assets and merchandise of the [fol. 7] defendant; to continue and conduct the business of the defendant for such period of time as the court may deem proper; to bring suit for, collect, receive and take into his or their possession all the property and assets, real and personal, goods, chattels, credits, rights, claims and equities, books, papers and securities and all other property whatsoever and wheresoever situated of the defendant; to institute, prosecute, become parties to, intervene in, compromise or defend suits and actions at law or in equity or otherwise, either for the recovery, protection or maintenance of any of the property and assets of the defendant as he or they may deem necessary or proper, including the institution and prosecution of such ancillary proceedings as said receiver or receivers may deem advisable, and including any other suits, actions or proceedings at law or in equity or otherwise in which the defendant may have any interest as plaintiff, defendant or otherwise, including the power to continue any such pending suits and defend or otherwise dispose of any such proceedings, suits or actions; to settle or compound or make allowances on any or all debts now due or owing or which may hereafter be due or owing to the defendant, as he or they may deem advisable or proper, subject to the further authorization of this court; to pay any claims for wages or otherwise that may be entitled to priority and with the other usual powers of receivers in such cases; and that the officers, managers, superintendents, agents and employees of the defendant be required forthwith to deliver up to said receiver or receivers possession of all and every part of the properties of the defendant wheresoever situated, including the several books, vouchers and papers in any way relating to the business of the defendant.

[fol. 8] (2) That this court will administer all and singular the property, rights and business of the defendant belonging to the defendant and will adjudicate, enforce and adjust the rights, liens, equities and claims of all the creditors of the defendant, including the complainant, as the same may be determined.

(3) That all creditors, stockholders and other persons be enjoined from instituting or presenting or continuing the prosecution of any actions, suits or proceedings at law or in equity or under any statute against the defendant and from levying any attachments, executions or other proceedings upon or against any of the properties of the defendant or from taking or attempting to take into their possession the property or any part of the property of the defendant or from interfering in any way with the possession, operation, control and management of the receiver or receivers.

(4) That a writ or writs of injunction issue out of and under the seal of this court, to be issued by one of the Judges thereof, directing, enjoining and restraining the defendant and the officers, superintendents, agents and employees of the defendant from interfering with, transferring, selling or disposing of any of the property or income of the defendant, or from taking possession of or levying upon or attempting to sell or dispose of, in any manner, any part of the property of the defendant.

(5) That this court will grant unto the plaintiff not only a writ of injunction but also a writ of subpœna of the United States of America, issued out of and under the seal of this court, and directed to the defendant, therein and thereby demanding it on a certain day therein named, under a certain penalty, before this court to answer (but not [fol. 9] under oath, an answer under oath being hereby expressly waived) of and in the premises, and to stand by, perform and abide by such orders, directions and decrees that may be made against it in the premises and as shall seem proper and right in equity and in good conscience.

(6) That at such time as may be found just and proper, the properties of the defendant may be ordered to be sold in whole or in part, in such manner and upon such terms and conditions as this court shall deem just and equitable

and that any such order of sale shall make proper and suitable provision for the preservation of all equities, rights, priorities, claims and liens of the creditors of the defendant and shall provide for the sale of the property of the defendant, subject to or free and clear of any and all liens and incumbrances, in whole or in part, in such manner and upon such terms as this court may direct and that the proceeds of any such sale be distributed among those entitled thereto as this court shall adjudicate, or that the properties of the defendant may be returned to it; and that the complainant may have such other and further and different relief in the premises as to this court may seem proper and as may be necessary fully to protect and enforce the rights and equities of the complainant and of all the creditors of the defendant; and that in case of any sale herein of the property of the defendant, it may be permitted to make, execute and deliver to the accepted purchaser or purchasers at any such sale such releases, bills of sale and conveyances as may be necessary or proper to vest in such purchaser or purchasers the title to all such several properties.

[fol. 10] (7) That such order shall be made by this court as to the service of this bill of complaint and of any order that may be made in this suit as may be deemed sufficient and proper to this court, and that the complainant may have such other and further relief in the premises as the nature and circumstances of the case may require and as to this court may seem just and proper.

And the complainant will ever pray, etc.

Valeria E. Coriell. Olcott, Holmes, Glass, Paul & Havens, Solicitors for Complainant, by Joseph Glass, Solicitor.

Duly sworn to by Valeria E. Coriell. Jurat omitted in printing.

[fol. 11] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT—Dated April 6, 1931

SIRS: Please take notice that the defendant, Morris White, Inc., appears in this action and that I am retained as attor-

ney for it therein, and demand that a copy of the complaint and all papers in this action be served on me at my office No. 50 Broadway, Borough of Manhattan, The City of New York.

Dated New York, April 6th, 1931.

Yours etc., Nathan D. Stern, Attorney for Defendant. Office & P. O. Address: 50 Broadway, Borough of Manhattan, City of New York.

To Olcott, Holmes, Glass, Paul & Havens, Esqs., Attorneys for Complainant. Office & P. O. address: 170 Broadway, Borough of Manhattan, City of New York.

To the Clerk of the United States District Court, Southern District of New York.

[fol. 12] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF DEFENDANT—Verified April 6, 1931

Morris White, Inc., a corporation of the State of New York, the defendant in the above entitled cause, makes answer pursuant to the action taken by its Board of Directors, as follows:

It has, by counsel, entered a general appearance in said cause. It admits all the allegations of the bill of complaint and hereby consents to the appointment of a receiver or receivers as prayed for in said bill.

Morris White, Inc., by Morris White, President. (Seal.)

[fol. 13] *Duly sworn to by Morris White. Jurat omitted in printing.*

[fol. 14] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Present: Hon. John C. Knox, U. S. D. J.

[Title omitted]

ORDER APPOINTING IRVING TRUST COMPANY TEMPORARY RECEIVER OF MORRIS WHITE, INC.—Dated April 6, 1931

This matter coming on to be heard this 6th day of April, 1931, upon the bill of complaint and answer to the complaint

filed in this cause, and after due deliberation it is, upon motion of the solicitors for the complainant,

Ordered, adjudged and decreed as follows:

First. The defendant, though appearing to have assets of large value, is now unable to meet its matured and immediately maturing obligations and will continue for considerable time to be unable to meet such matured and maturing obligations or any substantial portion thereof.

Second. The complainant is entitled to the relief herein granted; she has no adequate remedy save through the [fol. 15] granting of this decree, and it is necessary for the protection and preservation of the respective rights and equities of the complainant and all other creditors of the defendant that the property and business of defendant be preserved and administered in this suit through a receiver to be appointed by this court, and it is necessary that a receiver of the defendant and of its properties should be appointed forthwith, although the defendant is alleged to be solvent, and with powers herein granted.

Third. Irving Trust Company, a New York corporation, is appointed temporary receiver of the defendant and also of the properties of the defendant, real, personal and mixed, and of whatsoever kind and description including all lands, real estate and buildings, premises and appurtenances owned, controlled, leased or operated by the defendant, and all materials, supplies, merchandise, books of account, records, and other books, papers and accounts, cash on hand, in bank, or on deposit, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills and accounts receivable, rents, issues, profits, tolls and income accruing and to accrue as well as all interests, easements, privileges, franchises and appurtenances and all assets and property of all and every kind, character and description whatsoever of said defendant wheresoever situated.

Fourth. The receiver is authorized and directed forthwith to take possession of all and singular said property and assets above mentioned wherever situated or found; to preserve, manage, maintain and operate said property including such property as the defendant holds, controls or oper- [fol. 16] ates; to use, manage and conduct the business of

the defendant; to exercise the authority and franchises of the defendant; to discharge all public duties obligatory upon it; to protect and preserve the corporate franchises, privileges, property and assets and the corporate existence of the defendant; to preserve its property in proper condition and repair; to manage and operate the property according to the requirements of the valid laws of the various States in which such property is situated, in the same manner that the defendant would be bound to do if in possession thereof; to keep the property insured as it may deem advisable; to maintain the offices of the defendant in said district and elsewhere as of the date hereof; to employ, discharge and, subject to the approval of this court, fix the compensation of all officers, attorneys, and managers; to employ, discharge and fix the compensation of all superintendents, agents and other employees; to collect and receive the income, rents, revenues, tolls, issues and profits of the said property and to collect all outstanding accounts, things in action and credits due or to become due or owing to the defendant and all dividends on stock and interest on bonds or other securities belonging to it; to make such payments and disbursements as may be needful and proper in its judgment in connection with any of the foregoing, and to hold and retain the net revenues of said property in such manner and to the end that the same may be applied under this order and under such orders as this court may hereafter make. The receiver shall be allowed six months from the date of this order (unless the time be extended by further order of this court) within which to elect to adopt or continue in force [fol. 17] or to refuse to adopt or continue in force any lease or other contract not fully performed which may be included in the property of which it is appointed receiver whether made by the defendant or by any predecessor of the defendant. Such election may be made from time to time and shall be made by instrument in writing subscribed by the receiver and filed in the office of the Clerk of this court, and no conduct or user of the rights by the receiver or payments made by it as rent or otherwise, or any other acts or omissions of the receiver within said period of six months unaccompanied by the filing of such written instrument, shall be deemed to conclude the receiver in respect of such election or be deemed to constitute an election to adopt or to continue in force any such contract, lease or agreement.

Fifth. The receiver is authorized and empowered to institute and prosecute, within this judicial district or elsewhere in any court or before any officer, department, commission or other tribunal and in its own name as receiver or in the name of the defendant as it may be advised by counsel, all such actions, proceedings or suits as in its judgment may be necessary for the recovery or proper protection of said property or any part thereof and the discharge of its trusts, and likewise to appear in and defend any and all actions, proceedings or suits which may be instituted and prosecuted against it as receiver in or before any such tribunal. The receiver is further authorized and empowered, whether before or after any action, proceedings or suits in respect thereof shall have been begun and subject to the approval of the court, to compromise and settle and, out of funds com- [fol. 18] ing into its hands as receiver, pay claims and demands on all accounts accruing against it as receiver after the date of this order and arising out of its possession, maintenance or operation of the property of the defendant which, in the judgment of the receiver, are meritorious and capable of adjustment on terms advantageous to and for the proper protection of the property in its charge as receiver. The receiver is further authorized to intervene in or become a party to such suits, actions, proceedings at law or in equity, including ancillary proceedings in State or Federal courts as may in its judgment be necessary or proper for the protection, maintenance and preservation of the property and assets of the defendant in carrying out the terms of this order.

The receiver is also authorized and empowered to appear in and conduct the prosecution or defense of any and all actions, proceedings or suits now pending or which may hereafter be brought in any court or before any officer, department, commission or other tribunal in which the defendant is or shall be a party which, in the judgment of the receiver, affect or may affect the property of which it is appointed receiver. The receiver is further authorized and empowered, whether before or after any action, proceeding or suit in respect thereof has been begun, but subject to the approval of this court, to compromise and settle claims and demands on all matters which have accrued against the defendant or which have arisen out of the possession, maintenance and operation by the defendant of its property without

regard to when the same arose, but no compromise or settlement of any such claim or demand shall be deemed to make [fol. 19] the claim or demand so compromised or settled an obligation of the receiver or to free the claimant from making such proof of his claim as so compromised or settled before any special master hereafter appointed or otherwise as this court or any special master may request, and no action taken by the receiver in the defense of any such action, proceeding or suit against the defendant or in compromising or settling any such claim or demand against the defendant shall have the effect of establishing any claim upon or right in the property or funds in the possession of the receiver so as to alter or change any existing equities or legal rights of the parties.

Sixth. The receiver shall open books of account and shall keep or cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the property of which it is appointed receiver, and shall preserve proper vouchers for all payments made by it on account thereof and shall deposit the monies coming into its hands in such banks as shall be selected by it and approved by the court.

Seventh. The receiver is authorized in its discretion from time to time until the further order of this court, out of the funds coming into its hands, to pay all necessary expenses of conducting the business of the defendant or incident to the execution of this receivership including, among other expenses, the wages, salaries and compensation of all officers, counsel, managers, superintendents, agents and employees retained or employed by the receiver as above provided.

[fol. 20] Eighth. All persons, firms and corporations having in their possession any of the property and premises of which the receiver is hereby appointed receiver, including all property of which the defendant is or may become the beneficial owner whether held by it or by other persons, firms or corporations as trustees, agents or otherwise, shall forthwith deliver such property and premises to the receiver and make such transfers, assignments and conveyances in connection therewith as may be necessary or proper, and each and every of the officers, directors, agents and employees of the defendant is hereby required and commanded

forthwith to turn over and deliver to the receiver, or to its duly constituted representatives, any and all books of account, records, vouchers and papers, deeds, leases, contracts, bills, shares, bonds and other securities, accounts, monies or other property in his or their hands or under his or their control belonging to or in the possession of the defendant or to which it is or may become entitled, and each of said officers, directors, agents and employees is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by the receiver or its duly constituted representatives in conducting the operation of the property and in the discharge of its duties as receiver.

Ninth. The defendant, its officers, directors, attorneys, agents and employees and all persons claiming to act by virtue of or under it and all officers, marshals and sheriffs and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, are hereby restrained and enjoined from in any way prosecuting any suits [fol. 21] or proceedings of any kind, nature or description against the defendant, or in any way interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the assets, goods, monies, property and premises of which the receiver is hereby appointed, or from taking possession of or in any way interfering with the same or any part thereof, or in any way disturbing the possession of the receiver or from interfering in any manner to prevent the discharge by the receiver of its duties in the operation of the property and premises under the orders of this court.

Tenth. The receiver shall retain the possession of the property and continue to discharge the duties and trusts aforesaid until the further order of this court and from time to time make reports of its doing in the premises, and may from time to time apply to this court for such other and further orders and directions as it may deem necessary and requisite in the due administration of its trust.

Eleventh. The receiver is authorized to execute in its own name or in the name of the defendant, all necessary appeal, supersedeas, injunction or other bonds which may be required by law or in carrying out this order or any other orders of this court and to that end to enter into contracts with surety companies as sureties on such bonds and to

pay the reasonable charges of such surety companies therefor as well as any amounts they may be required to pay by reason of signing such bonds as sureties.

[fol. 22] Twelfth. All claims and demands against the defendant shall be presented to the receiver within three months from the date of mailing notice as hereinafter provided. The receiver shall give public notice accordingly by publication once in each of two successive calendar weeks upon any day in the week, in a newspaper printed in the English language and published in the City of New York, State of New York, of the time within which, the place where and the manner in which such claims and demands shall be so presented, and shall mail a copy of such notice by registered mail to each person, firm, corporation or association appearing on the books of the defendant to be a creditor or otherwise known to the receiver to be claiming to be such a creditor, at the last known address of such creditor or claimant.

All persons failing to present their claims or demands against the defendant to the receiver within said period of three months shall be barred from sharing the benefits of the distribution of the monies and proceeds of the properties of the defendant that now are or hereafter shall be in the hands of the receiver, and from sharing or participating in the distribution of any of the proceeds arising from the sale of the properties of the defendant if such sales shall be hereafter adjudged and decreed in this cause.

Thirteenth. The complainant herein and also the receiver are authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become parties to such suits, actions, proceedings at law or in equity including ancillary proceedings in State or Federal courts and in the courts of any foreign country as [fol. 23] may be deemed necessary or proper in aid of the orders issued by this court, and to apply to any such courts for such order or orders as may be deemed necessary or proper therefor. The right is reserved to the parties hereto to apply to this court for any other instructions to the receiver and the court reserves the full right and jurisdiction to make from time to time such further orders amplifying, extending, limiting or otherwise modifying this

order as to it may at any time seem proper, and in all respects and at all times to regulate and control the conduct of the receiver.

Fourteenth. In case of the resignation or removal of the receiver hereby appointed and the appointment of a successor or successors to the receiver who shall so resign or be removed, all the provisions of this order shall apply to such successor without further order of this court.

Fifteenth. The receiver shall further give at least ten days' notice by mail to all known creditors, claimants and stockholders of the defendant, that the matter of making said receivership permanent and/or modifying this order will be heard and determined on May 8th, 1931, at 4:30 o'clock P. M., in Court Room No. 2, Woolworth Building, Borough of Manhattan, New York, N. Y.

Jno. C. Knox, U. S. D. J.

[fol. 24] UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER OF JUDGE KNOX REQUIRING CREDITORS TO SHOW CAUSE WHY THE OFFER MADE BY LILY WHITE TO PURCHASE ALL OF THE ASSETS OF MORRIS WHITE, INC., SHOULD NOT BE ACCEPTED—Dated May 12, 1931

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

Ordered that all creditors of the defendant and any and all persons interested show cause at a term of this Court, to be held in Courtroom No. 2 in the Woolworth Building, No. 233 Broadway, Borough of Manhattan, City of New York, on the 26th day of May, 1931, at 4:30 o'clock in the afternoon of that day, or as soon therafter as counsel can be heard, why the offer made by Lily White, dated April 29, 1931, and submitted to Irving Trust Company as Receiver herein, should not be accepted and approved by

this Court, and at such time and place to consider and act upon any other offer or offers which may be then made; and it is further

[fol. 25] Ordered that a copy of this order, together with the annexed petition, be served upon all creditors of the defendant and all parties interested, in so far as they may be known to the Receiver, by mailing a copy thereof addressed to the said creditors and parties interested, at the addresses as appear upon the books of the defendant, on or before May 12th, 1931, and by publication on or before May 15th, 1931, in the New York Times of a notice briefly stating the provisions of this order.

Dated: New York, N. Y May 12, 1931.

Jno. C. Knox, U. S. D. J.

It is stipulated that the Receiver gave due notice of hearing pursuant to the terms of the foregoing order.

Dated New York, September 14, 1931.

Saul S. Myers, Attorney for National Surety Company, American Credit Indemnity Company, and London Guaranty and Accident Company, Ltd., Appellants. Baldwin, Hutchins & Todd, Attorneys for Hermann Loewenstein, Appellant. O'Connell & Butler, Attorneys for G. Levor & Co., Inc., Appellant.

[fol. 26] United States District Court Southern District of New York

[Title omitted]

Petition of Irving Trust Company Upon Which the Order of Judge Knox Was Based Requiring Creditors to Show Cause Why the Offer Made by Lily White to Purchase All of the Assets of Morris White, Inc., Should Not be Accepted—Verified May 12, 1931.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The petition of Irving Trust Company, as Receiver of the above-named defendant, by Olcott, Holmes, Glass, Paul & Havens, its attorneys, respectfully shows:

First. That your petitioner is a corporation duly organized under the banking laws of the State of New York and on the 6th day of April, 1931, was duly appointed Receiver of the defendant above named, has qualified, and is now duly acting as such receiver.

Second. That an offer, a copy of which is annexed hereto, marked Exhibit 1, has been submitted to your petitioner for the purchase of all the assets of the defendant and all of the right, title and interest of the Receiver [fol. 27] therein. The Court is respectfully referred to said offer for the details thereof.

Third. That pursuant to a call made by petitioner, a meeting of the creditors of the defendant was held on April 14, 1931, at which meeting petitioner made a preliminary report as to the assets and liabilities of defendant and the general status of the business of defendant. There were present at such meeting creditors with claims aggregating over $740,000 out of a total indebtedness of $1,072,000. At said creditors' meeting a creditors' committee consisting of nine creditors was unanimously elected. Upon information and belief that the members of said committee represent creditors whose claims aggregate $589,000.

Fourth. That said creditors' committee promptly met and appointed various sub-committees for the purpose of appraising the assets of the defendant and working out a plan of reorganization. Petitioner is advised that the plan embodied in the offer, a copy of which is hereto annexed, marked Exhibit 1, has resulted from the activities of said committee.

Fifth. That petitioner is advised that said offer was duly considered by said committee and was unanimously approved and that on April 29, 1931, said committee adopted a resolution, a certified copy whereof is hereto annexed, marked Exhibit 2.

[fol. 28] Sixth. Attached to said offer, and marked Exhibit A, is a certificate signed by Messrs. Klein, Hinds & Finke, certifying as to the amount of liabilities of the defendant corporation, as shown upon its books on the date of the appointment of the Receiver herein. A copy of said certificate is hereto attached.

Seventh. Attached hereto, and marked Exhibit 3, is an instrument duly acknowledged by Michael Hollander, Esq., chairman of said creditors' committee, wherein he expresses his willingness to undertake the matters referred to in said offer and wherein he, further, submits himself to the summary jurisdiction of this Court with regard thereto.

Eighth. That it has been made an express condition of said offer that same be accepted no later than May 29, 1931. For that reason an order to show cause is respectfully asked for.

Ninth. That in your petitioner's opinion prompt action is desirable in order to facilitate the prompt termination of this receivership.

Wherefore petitioner respectfully asks that the annexed order to show cause be signed.

Dated New York, N. Y., May 12th, 1931.

Irving Trust Company, by Robert L. Smith, Assistant Vice-President.

[fol. 29] *Duly sworn to by Robert L. Smith. Jurat omitted in printing.*

[fol. 30] EXHIBIT 1 ANNEXED TO THE PETITION OF IRVING TRUST COMPANY UPON WHICH THE ORDER OF JUDGE KNOX WAS BASED REQUIRING CREDITORS TO SHOW CAUSE WHY THE OFFER MADE BY LILY WHITE TO PURCHASE ALL OF THE ASSETS OF MORRIS WHITE, INC., SHOULD NOT BE ACCEPTED, BEING THE OFFER OF LILY WHITE DATED APRIL 29, 1931

[Title omitted]

To Irving Trust Company, Receiver in Equity of Morris White, Inc.:

First. The undersigned hereby offers to purchase from you, as Receiver in Equity of the property and assets of the defendant Morris White, Inc., all of the right, title and interest of yourself as such Receiver and all of the right, title and interest of the said Morris White, Inc., (a New York corporation having its principal place of business at

621 Sixth Avenue, Borough of Manhattan, City of New York,) in and to all of the assets, business and properties of Morris White, Inc., including (but not limited thereto) all cash on hand and in banks or otherwise on deposit (subject to all agreements entered into by you as Receiver as [fol. 31] to any such deposits), all accounts and notes receivable (subject to any existing assignments thereof heretofore made by Morris White, Inc.), trade acceptances, bills of exchange, claims, choses in action and other evidences of obligation; all inventories and merchandise (the same being likewise subject to any existing assignments thereof heretofore made by Morris White, Inc.), all interest, insurance and any other prepaid items; any and all amounts due from officers and employees; all the issued capital stock of any one hundred percent. owned subsidiary, and any and all stock of and investments in other companies, including investments or holdings represented by stock certificates, claims, accounts and/or notes receivable, and/or otherwise; all leases, leaseholds, subleases, licenses, furniture and fixtures; machinery, tools, appliances and equipment; and all materials and supplies; any and all manufactured products or materials in process of manufacture, all rights under any and all contracts and orders; all patents, processes, inventions, rights under and interests in and claims to patents, processes, inventions, trade marks, trade names, copyrights and trade rights of any kind, nature, description or sort and the good will of the said business of Morris White, Inc., and all other assets and/or properties of whatsoever kind, nature or sort; together with all rights, privileges and franchises used or of use in [fol. 32] or arising in connection with or had in connection with the said business of Morris White, Inc., as well as all of the right, title and interest of yourself as Receiver and/or of Morris White, Inc., the New York corporation, in and to the use of the name of "White" and/or "Morris White, Inc." and/or any and all other names used by said Morris White, Inc. in connection with its business, together with any and all moneys and receipts which have come or may come and remain in your possession as Receiver in any manner during the receivership, less, however, such amounts as were expended and/or obligated to be expended and/or will be expended or obligated to be expended by

you as Receiver in the conduct of the business of the said Morris White, Inc., in receivership, or otherwise in connection with the performance of your duties as Receiver including (but not limited to) all expenditures and/or obligations in connection with the purchase of merchandise, the borrowing of money, the renting or use of premises, the hiring of help, the advertising of the said business and all other expenses, commitments or obligations whatsoever incurred by you in connection with the carrying on of the said business of Morris White, Inc. by you in Equity Receivership and the performance of your duties as such Receiver. Anything herein contained or implied to the contrary notwithstanding, this purchase is intended to be of [fol. 33] only such title as is vested in you to said assets as Receiver in Equity of Morris White, Inc., subject to such increase or diminution or change in and to said assets and/or your title thereto as may result or have resulted from the operations of the Receiver up to the time the same shall be discharged from the custody of the Receiver pursuant to the terms of this offer. All assets referred to herein to be acquired pursuant hereto are to be sold "as are" at their situs at the time the New Corporation hereinafter referred to becomes entitled to their possession pursuant hereto, subject to all risks incident to levy of executions, attachments or other process and to the assertion and/or existence of any liens or claims of right of possession or ownership thereof.

Such assets as the undersigned may elect not to take shall be excluded herefrom, provided that notice of such election shall be given to the Receiver in writing before the bills of sale become deliverable as hereinafter provided for.

Second. The undersigned offers and agrees to do the following:

(1) Cause to be organized under the laws of the State of New York, a corporation under the name of "Morris White Handbags, Inc." (or such other name as may be available in the event that said name is not available) said corporation being hereinafter referred to as the "New Cor-[fol. 34] poration" with an authorized capital stock of ten thousand (10,000) shares, said capital stock to be divided into two classes: One thousand (1,000) shares thereof to

be common stock without par value which may be issued for such consideration as the Board of Directors of the corporation may deem advisable; nine thousand (9,000) shares thereof to be preferred stock, of the par value of One Hundred Dollars ($100) per share. Said preferred stock shall be issued by the New Corporation only and solely to or for the account of creditors of Morris White, Inc. (as hereinafter defined), at par, in payment of eighty percent. (80%) of the proved and allowed amount of the said indebtedness to said respective creditors, all as hereinafter provided; and said preferred stock shall not be is-ued or at any time reissued for any other purpose whatsoever.

The distinguishing preferences, rights, privileges, voting powers, restrictions, conditions, limitations and provisions upon which each of the said classes of stock shall be issued are as follows:

Except as otherwise provided by statute, and except as is expressly provided herein, the holders of the common capital stock shall have the sole and exclusive right to vote and consent for any purpose and the holders of the preferred stock shall have only such voice or vote in regard to the management of the corporation as is expressly herein granted and all other powers, express or implied, shall be [fol. 35] held and had by the owners and holders of the common stock; the said preferred stock shall not be entitled to vote upon the question of increase or decrease of the common capital stock of the corporation, nor the right to vote for any directors except to vote for directors who by the terms of the certificate of incorporation of the New Corporation are at any time to be elected by the holders of the preferred stock, nor shall they be entitled to vote in any proceeding for mortgaging the property and/or franchises of the corporation pursuant to Article XVI of the Stock Corporation Law, or for the sale of the franchises or the property of the corporation pursuant to Section 20 of the said law, but they shall be entitled to vote upon any proposition for the guaranteeing of bonds or obligations of any other corporation pursuant to Section 19 of the said law, and they shall be entitled to vote solely and as a class and to the exclusion of any other class of stock upon any proposition for the establishing of priorities or creating further preferences among the several classes of stock

pursuant to Section 36 of the said law. The holders of the preferred stock shall be entitled to vote upon any proposition for consolidation pursuant to Section 86 of the said law, but shall not be entitled to vote for any proposition for change of name of the corporation pursuant to the General Corporation Law, nor on the question or matter of [fol. 36] voluntary dissolution pursuant to Section 105 of the said Stock Corporation Law. They shall, however, be entitled to vote upon any proposition for increasing or decreasing the number of shares of preferred stock and the consent of the holders of two-thirds of the issued outstanding preferred stock shall be necessary and requisite upon any proposition to increase the total number of shares of outstanding preferred stock or to create any other class of preferred stock unless the proposition is to create a class of preferred stock which shall, in all respects, be subject, subordinate and secondary to the preferred stock herein specified. The holders of the aforesaid preferred stock shall at all times while it is outstanding, have the sole and exclusive right, as a class, to elect two of the five directors of the New Corporation. Said right to elect two of the five directors shall continue and remain wholly and solely with the preferred stock as long as the said preferred stock has not been entirely redeemed or retired and/or provision made for its redemption and retirement. Said right to elect two directors as aforesaid shall be subject to enlargement under the following circumstances: in the event that one Morris White shall not be elected president of the New Corporation, and/or being elected, shall fail to qualify as president of said New Corporation, and fail to continue to act as executive in general charge of the New Corporation's [fol. 37] affairs, then and in that event, from and after such date and until said Morris White shall again be elected as president of the said New Corporation and qualify as such president, and act and continue to act as its executive in general charge of its affairs, the said preferred stock shall have the sole and absolute right as a class, to elect three of the New Corporation's directors and from such date the common stock shall have the right to elect two and only two of such New Corporation's directors. Upon the redemption of the said preferred stock in toto and/or its retirement in toto, and/or the making of provision

therefor, all rights of the preferred stock of any kind, nature or description herein expressly granted, shall cease and lapse and all such rights shall be vested wholly and solely in the holders of the common stock.

The By-laws of the said New Corporation shall provide that so long as any of the promissory notes in this Offer referred to (to be issued by the said New Corporation), shall remain unpaid and no provision for the payment of all of them has been made, the Board of Directors shall have the sole and exclusive right to employ the executives of said corporation and to fix the amount of salary as to all such executives of the said New Corporation, and such action of said Board of Directors shall be concurred in by four of the five members of the said Board of Directors in [fol. 38] order to be a valid exercise of the powers of the said Board of Directors in that regard, and if feasible the Certificate of Incorporation of said New Corporation shall likewise contain a provision of similar effect.

The Certificate of Incorporation and the by-laws of the said New Corporation shall provide also that in the event of the death, resignation or inability to act of any of the directors of the said New Corporation, that the successor to such director's or directors' unexpired term shall be filled by the action of the stockholders of that class of stock which elected the director whose resignation, disability or disqualification caused or causes such vacancy.

The holders of the preferred shares shall be entitled to receive from the surplus or net profits of the corporation as and when declared by the Board of Directors non-cumulative dividends upon such shares at the rate of six per-cent. (6%) per annum, payable semi-annually in preference and priority to the declaration or payment of any dividend upon the common shares or upon any other shares that the corporation may hereafter issue. No dividends however shall be paid or declared on any class of stock unless and until the series of promissory notes (the last of which matures July, 1933) to be issued by the New Corporation simultaneously with the said stock, shall have been paid or provision made for the payment thereof by the corporation.

[fol. 39] No dividends shall be paid upon the common stock until all outstanding preferred stock shall have been redeemed or retired and /or provision made therefor.

It shall be mandatory upon the directors of the New Corporation to cause an audit of the affairs and the business of the corporation to be made each year by a firm of Certified Public Accountants of its selection. In the event that any such firm of Certified Public Accountants shall report that during any fiscal year ending after July 1st, 1933, there has been any net operating profits earned by the said corporation, that then and in that event, subject to the provisions of law applicable thereto, it shall be mandatory upon the directors of the said corporation to cause the corporation to apply one-third of the said earned net operating profits of the said corporation for said fiscal year to the redemption and/or retirement of the aforesaid preferred stock.

In computing "net profits" for all of the purposes hereof (a) all merchandise of the corporation shall be figured at cost or market, whichever is lower, (b) provision shall be made for payment of all taxes, depreciation, contingencies and depletion, (c) reasonable reserves shall be set up for losses on accounts receivable, (d) deduction shall be made for maintenance and all other necessary expenses in connection with the operation of the business.

[fol. 40] Said preferred stock shall be redeemable or retirable at par, plus any and all declared and unpaid dividends.

Whenever redemption or retirement of preferred stock is referred to herein, it means pro rata redemption and/or retirement, as the case may be, of all of such issued and outstanding stock; subject, however, to the right of the corporation upon such redemption and/or retirement to disregard all fractional requirements of such redemption and/or retirement.

Upon the dissolution of the corporation and/or the distribution of its assets, the holders of the preferred shares shall be paid in full the par value of the shares held by them plus any declared and unpaid dividends thereon before any amount shall be distributed among the holders of the common shares; on and after such payment to the holders of the preferred shares, the net remaining assets, if any, shall be distributed among the holders of the common shares.

The foregoing provisions enumerated under subdivision "1" hereof shall also be duly embodied in and become and remain part of the by-laws of the said corporation, in form

and substance satisfactory to Milton C. Weisman, counsel to the Creditors' Committee.

The said by-laws of the said corporation shall likewise provide that all of the officers and directors of the said cor-
[fol. 41] poration except those representing the Merchandise Creditors and the Bank Creditors (who shall not be so removable), shall be removable with or without cause by the majority vote of the holders and owners of the common capital stock of the said corporation.

The certificate of incorporation and by-laws of the New Corporation shall contain such additional clauses as may in the opinion of counsel for the Creditors' Committee and the New Corporation be deemed desirable to effectuate the purposes herein expressed or reasonably implied.

(2) Assign to said New Corporation all of the right, title and interest of the undersigned in and to this offer and all benefits thereunder.

(3) Cause the said New Corporation in consideration of the sale, assignment and transfer to it of all of the benefits of this offer, to assume all of the obligations of the undersigned under and by virtue of this offer and to execute and deliver at or before the delivery of the bills of sale to it hereunder to counsel to the Creditors' Committee, an instrument expressing such assumption, in form and substance satisfactory to said counsel.

(4) Cause the New Corporation, at or before the delivery of the bills of sale to it hereunder, to execute and deliver to all assignees of accounts receivable and the merchandise represented thereby, pursuant to assignments heretofore made by Morris White, Inc., an instrument or instruments in form satisfactory to such assignees, recognizing the
[fol. 42] validity of and assuming the performance of all of the terms and covenants of the instruments effecting said assignments, in so far as such terms and covenants may then be unperformed.

(5) Cause the New Corporation within 5 days after the signing of an order approving the acceptance of this offer by the United States District Court for the Southern District of New York,

(a) To pay in cash (or in notes, if acceptable to the person to whom same may be payable), any and all costs of administration of the business and properties of Morris White, Inc., by the Receiver in Equity herein, to such persons, including the Receiver, and in such amounts, as may be agreed upon with the New Corporation, or in the absence of such agreement, as the United States District Court for the Southern District of New York shall direct.

(b) To pay any and all liabilities and obligations incurred by the Receiver in Equity herein, in the performance of its duties as such Receiver, and/or in the course and conduct of the business of Morris White, Inc., and remaining unpaid by the Receiver, or in lieu thereof, cause the said New Corporation to furnish security in form and amount satisfactory to the Receiver, securing the payment of any and all such obligations.

[fol. 43] (c) To pay, or otherwise obtain a release or discharge or indemnity therefrom running to the Receiver, in form and substance satisfactory to the Receiver, any claims of the United States Government, the State of New York, and any and all other lien and/or preferred creditors of Morris White, Inc.

(d) To pay to the attorney for the Creditors' Committee a counsel fee in an amount to be agreed upon between him and the New Corporation.

(e) To make provision in the manner hereinafter provided, for the payment to each of the creditors of Morris White, Inc., as hereinafter defined, of one hundred percent. (100%) of the amount of the indebtedness allowed against said Morris White, Inc. in these receivership proceedings; twenty percent. (20%) thereof by its negotiable promissory notes and eighty percent. (80%) thereof by issuing to the said creditors, at par, its preferred stock. By "creditors of Morris White, Inc." is meant each and every creditor whose claim may be duly proved and allowed in said receivership proceedings. Said twenty percent. (20%) shall be payable in four equal installments of five per cent. each, to be evidenced as to each creditor by four non-interest bearing negotiable promissory notes to the order of each of the [fol. 44] said creditors, the first of which series of four

notes deliverable to each creditor shall be due January 2nd, 1932, the second of which shall be due July 2nd, 1932, the third of which shall be due January 2nd, 1933, and the fourth of which shall be due July 2nd, 1933. In the event of the default in the payment of any one or more of the aforesaid notes, and the continuation of such default for a period of twenty (20) days after notice of such default by registered mail to the New Corporation, all of the aforesaid notes remaining unpaid at the time of such default shall at the option of each holder, immediately become due and payable. Said notes and stocks shall be deliverable in the following manner: Annexed hereto, marked "Exhibit A," is a statement of Messrs. Klein, Hinds & Finke, Certified Public Accountants, setting forth the total liabilities of Morris White, Inc., as per its books, as of the date of the receivership; within the said 5 days hereinbefore mentioned, after the signing of an order approving the acceptance of this offer, the New Corporation will deliver to Michael Hollander, Esq., Chairman of Creditors' Committee, its four negotiable promissory notes, each note for five percent. (5%) of the total amount of indebtedness shown on "Exhibit A," the first of said notes payable January 2nd, 1932, [fol. 45] the second of said notes payable July 2nd, 1932, the third of said notes payable January 2nd, 1933, the fourth of said notes payable July 2nd, 1933, and will likewise deliver to Michael Hollander, a certificate for all of the New Corporation's authorized preferred stock, endorsed in blank for transfer.

Upon the entry of an order approving the acceptance of this offer, the Receiver will advertise for claims against Morris White, Inc. or take such other steps as it may be directed to take by the order of this Court, to be entered in that regard. Upon the termination of the period for filing claims, the Receiver shall deliver to the New Corporation and Michael Hollander and counsel to the Creditors' Committee a certificate showing the total amount of such claims filed, the names and addresses of all claimants and the amounts of their respective claims, and if the total amount shown upon the said certificate shall exceed the total amount shown upon "Exhibit A," the New Corporation shall within five days after such certificate shall have been delivered by it, deliver to the said Michael Hollander additional

similar notes as aforesaid (except as to amonut) for twenty percent. (20%) of the said excess and if the authorized preferred stock of the New Corporation shall be less than [fol. 46] eighty percent. of the total of such amount, it shall thereupon (said Hollander agreeing to consent thereto) duly cause its authorized preferred stock to be increased to an amount equal to eighty percent. (80%) of such claims filed and upon such increase becoming effective, forthwith deliver any and all additional authorized preferred stock to Michael Hollander for the uses and purposes herein recited. Upon the final determination of all claims, the Receiver shall furnish to the New Corporation, Michael Hollander and counsel to the Creditors' Committee, a certificate showing the total amount of all claims filed which were not objected to and also of all claims which, if objected to, were allowed, and the names and addresses of all claimants and the amounts of their respective claims not objected to, or if objected to, allowed. Thereupon, the New Corporation will deliver to Michael Hollander, for and to the order of each creditor whose claim shall have been allowed, its four notes aggregating twenty per cent. (20%) (i. e. five per cent. each as aforesaid) of such claim as finally determined, said notes payable as aforesaid. Upon delivery to said Hollander of all of said notes, he shall deliver back to the New Corporation the notes theretofore held by him, duly cancelled.

[fol. 47] The said Michael Hollander will also thereupon return to the New Corporation for cancellation so much of the preferred stock received by him as aforesaid as shall represent the excess in par value over and above eighty per cent (80%) of the total amount of the claims shown upon said Receiver's Certificate to not have been objected to, and of the claims shown thereon to have been allowed, if objected to. With regard to the balance of the said preferred stock, remaining in the hands of said Michael Hollander, he shall thereupon cause the same to be transferred into the names of two designees, as voting trustees, one of such designees to be designated by the members of the Creditors' Committee representing the merchandise creditors and the other such designee to be designated by the members of the Creditors' Committee representing the bank creditors. The said two designees shall hold said stock in

their names as voting trustees for the benefit of all of the creditors. The term of such voting trust shall be ten years. The said voting trustees shall forthwith issue voting trust certificates to the various creditors, such certificates to represent as to each creditor the number of shares of preferred stock at par as shall be equal to eighty per cent (80%) of his claim as shown upon said Receiver's Certifi- [fol. 48] cate. All of the terms of the voting trust agreement pursuant to which the said trustees shall act, shall be in form and substance satisfactory to counsel to the Creditors' Committee.

Said voting trustees shall forthwith cause the election to the Board of Directors of one member of the Creditors' Committee representing the merchandise creditors and one member of the Creditors' Committee representing the bank creditors and will thereafter, from year to year, and as the office of either or both of said directors may for any cause become vacant, elect a person representing like creditors to the said board. The voting trust agreement, and or the Certificate of Incorporation and/or By-laws of the New Corporation shall contain appropriate provisions, satisfactory to counsel for the Creditors' Committee, designed to carry into effect the foregoing provisions.

The New Corporation shall pay to Michael Hollander and/or the voting trustees all reasonable expenses of any nature that may be incurred by him or them or any of them in connection with the premises.

(f) To duly deliver, duly executed, any and all other instruments, contracts, assumptions, agreements herein referred to, or as may in the opinion of counsel to the [fol. 49] Creditors' Committee or counsel to the Receiver be deemed advisable and/or required pursuant hereto, all in form and substance satisfactory to them.

(g) To file a notice of appearance herein subjecting itself to the jurisdiction of this Court for the purpose of enforcing payment of the purchase price and the performance of the covenants of this offer by the New Corporation to be performed.

(h) To deliver to Michael Hollander as Chairman of the Creditors' Committee, an instrument in form and substance satisfactory to counsel for the Creditors' Committee,

wherein and whereby it shall agree, that in consideration of the acceptance of said promissory notes by the creditors of Morris White, Inc., the payment of such promissory notes shall not be anticipated in advance or their respective maturity dates unless any such anticipation shall be made in pro rata reduction of all notes of said maturity then outstanding, and the New Corporation shall further thereby agree that in the event the said New Corporation shall violate said covenant, all notes outstanding at the time of such anticipation shall immediately become due and payable at the separate option of each of the holders of such promissory notes.

Third. Upon compliance by the New Corporation with so much of the foregoing paragraph and its subdivisions [fol. 50] as are to be performed within 5 days after the signing of an order approving this offer and at or before the delivery of the bills of sale hereunder, the Receiver and Morris White, Inc., will deliver to the New Corporation their respective bills of sale of the assets sold pursuant hereto and pursuant to any order that may be entered hereon.

Fourth. The within offer contemplates the following to be done by the Receiver:

(1) The presentation of the within offer to the United States District Court for the Southern District of New York, and the approval of the acceptance of said offer by the Receiver and the entry of an order thereupon by the United States District Court for the Southern District of New York.

(2) The delivery by the Receiver of all of its right, title and interest in and to all of the assets required by this offer to be delivered by it, subject, however, to the retention by the Receiver of such assets as this Court and/or the Receiver shall then determine, to provide for such expenses of administration and obligations of the Receiver as may not otherwise be provided for by the New Corporation pursuant to any other provisions hereof.

[fol. 51] (3) The execution by the Receiver of any and all instruments of assignment and transfer and/or other papers or documents necessary to effectuate the transfer

of the Receiver's right, title and interest in and to said assets, business and property.

(4) The procurement by the Receiver of a bar order from the Court fixing and determining the right of creditors to file their claims within such time as the Court may set forth in such bar order, and forever barring any and all creditors, stockholders, persons, firms or corporations who shall not file their claims within the time limited therefor from asserting any claim against Morris White, Inc., and/or its assets.

Fifth. The New Corporation shall have the right to contest any claims filed against Morris White, Inc., and the expenses of any Special Master appointed by the Court or any other expenses incurred in connection with the contest of any claim or claims which may be filed against the estate herein or Morris White, Inc., or the Receiver, shall be deemed a part of the cost of administration and shall be paid or provided for in the manner hereinbefore provided for.

Sixth. It is further understood and agreed that the said [fol. 52] decree of the United States District Court for the Southern District of New York shall authorize and direct Morris White, Inc., by its officers, to join with the Receiver and/or otherwise, in any assignment, transfer or conveyance of any or all of the assets of Morris White, Inc. and/or of the Receiver in Equity of Morris White, Inc., and that for that purpose the injunction decree restraining any such sale, assignment or transfer shall be modified and vacated.

Seventh. It is further understood and agreed that the undersigned shall have the right to, and shall be obliged to, assign the rights and obligations of the undersigned under the terms of this offer, to the New Corporation, which New Corporation, when such assignment shall have been made, shall have all of the rights and obligations of the undersigned by virtue hereof.

Eighth. It is further understood and agreed and it is the intention of this offer that although the same is made in the name of the undersigned offeror, it shall be performed by and the benefits of the offer and/or contract received by the New Corporation.

Ninth. The Creditors' Committee herein referred to is the Committee selected at the meeting of creditors called [fol. 53] herein on April 14th, 1931, by the Receiver. Said Committee consists of Messrs. Hollander, Hausman, Jephson, Quigan, Bernheim, Survis, Rosenberg, Schoenfield and Weisman. Michael Hollander is Chairman of said Committee and Milton C. Weisman is Secretary and counsel to said Committee.

Tenth. In view of the imminent change in season affecting the operations of the defendant corporation and the loss of value of the assets purchased which will occur unless provision is made to promptly meet the requirements of the trade so that the benefits of the season may not be lost to the New Corporation, this offer is contingent upon the acceptance thereof on or before May 29th, 1931.

Dated New York, the 29th day of April, 1931.

Lily White. (L. S.)

[fol. 54] EXHIBIT A ANNEXED TO THE PETITION OF IRVING TRUST COMPANY UPON WHICH THE ORDER OF JUDGE KNOX WAS BASED REQUIRING CREDITORS TO SHOW CAUSE WHY THE OFFER MADE BY LILY WHITE TO PURCHASE ALL OF THE ASSETS OF MORRIS WHITE, INC., SHOULD NOT BE ACCEPTED, BEING A CERTIFICATE FROM THE ACCOUNTANTS STATING THE AMOUNT OF LIABILITIES OF THE DEFENDANT CORPORATION AS SHOWN UPON ITS BOOKS ON THE DAY OF THE APPOINTMENT OF THE RECEIVER

[Title omitted]

This is to certify that the amount of liabilities of the above defendant as shown upon its books on the date of the appointment of the Receiver herein is the sum of One Million Seventy-two Thousand and 30/100 Dollars ($1,072,000.30).

Dated New York, April, 29th, 1931.

Klein, Hinds & Finke, by Myron A. Finke.

[fol. 55] EXHIBIT 2 ANNEXED TO THE PETITION OF IRVING TRUST COMPANY UPON WHICH THE ORDER OF JUDGE KNOX WAS BASED REQUIRING CREDITORS TO SHOW CAUSE WHY THE OFFER MADE BY LILY WHITE TO PURCHASE ALL OF THE ASSETS OF MORRIS WHITE, INC., SHOULD NOT BE ACCEPTED, BEING A RESOLUTION OF THE CREDITORS' COMMITTEE APPROVING THE OFFER OF LILY WHITE

[Title omitted]

The undersigned, Chairman and Secretary respectively of the Creditors' Committee selected by the creditors of the defendant at a meeting of the creditors duly called by the Receiver, do hereby certify that the said Creditors' Committee at a meeting of the said Committee duly held on April 29th, 1931, duly adopted a Resolution in the following form:

Resolved, that this Committee as a Creditors' Committee of Morris White, Inc., selected by the creditors of said Morris White, Inc., at a meeting of the creditors called by the Receiver of the said Morris White, Inc., after due investigation and deliberation does hereby approve the [fol. 56] written offer made by Lily White, dated April 29th, 1931, and favors and recommends the acceptance thereof by the creditors of the said Morris White, Inc., and by the Court.

Dated New York, May 11th, 1931.

Michael Hollander, Chairman. Milton C. Weisman, Secretary.

[fol. 57] EXHIBIT 3 ANNEXED TO THE PETITION OF IRVING TRUST COMPANY UPON WHICH THE ORDER OF JUDGE KNOX WAS BASED REQUIRING CREDITORS TO SHOW CAUSE WHY THE OFFER MADE BY LILY WHITE TO PURCHASE ALL OF THE ASSETS OF MORRIS WHITE, INC., SHOULD NOT BE ACCEPTED, BEING AN INSTRUMENT DULY ACKNOWLEDGED BY MICHAEL HOLLANDER, CHAIRMAN OF THE CREDITORS' COMMITTEE, SUBMITTING HIMSELF TO THE SUMMARY JURISDICTION OF THE COURT

[Title omitted]

I, Michael Hollander, Chairman of the Creditors' Committee mentioned in the foregoing offer, do hereby subscribe my willingness, in the event that the Court shall approve the said offer, to undertake the matters therein referred to, to be undertaken by me, and do hereby submit to the summary jurisdiction of this Court with regard thereto.

Dated New York, May 11th, 1931.

Michael Hollander, Chairman.

[fol. 58] State of New York,
County of New York, ss:

On this 11th day of May, 1931, before me personally appeared Michael Hollander, to me known and known to me to be the person described in the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same.

Nathan M. Friedman, Notary Public, New York County. New York County Clerk's No. 693, Reg. No. 3-F-457. Kings County Clerk's No. 548, Reg. No. 3294. Commission expires March 30, 1933.

[fol. 59] United States District Court for the Southern District of New York

[Title omitted]

Order Authorizing Receiver to Pay Judgment of Pfister & Vogel Leather Company—Dated May 14, 1931

This application having duly come on to be heard, and having been adjourned to April 21, 1931, and having been argued by counsel, and thereupon on consideration thereof, it is ordered, adjudged, and decreed as follows, viz:

Ordered, adjudged and decreed that said motion of Pfister & Vogel Leather Company to vacate the order herein dated April 6, 1931, insofar as said order enjoins the Sheriff of the County of New York from proceeding to execute the levy made by him upon the property of the defendant, Morris

White, Inc., under and pursuant to an execution issued in favor of Pfister & Vogel Leather Company on March 31, 1931 [fol. 60] upon a judgment rendered against said Morris White, Inc., in the sum of $25,036.26 and entered in the office of the Clerk of the County of New York on said day, be, and the same hereby is granted, and it is further

Ordered, adjudged and decreed that Pfister & Vogel Leather Company forbear in the enforcement of its legal rights and remedies under the judgment, execution and levy, and that the sum of $6,000.00 be paid to Lesser Brothers, as attorneys for Pfister & Vogel Leather Company, on the entry of this order, $3,000.00 to be paid on May 16, 1931, $3,000.00 to be paid on May 20, 1931 and $4,000.00 to be paid weekly thereafter by the receiver herein, out of the funds and assets of the estate herein available, to be applied on account of the aforesaid judgment and interest due thereon, and the fees, poundage and disbursements due to the Sheriff of the County of New York in connection with the execution and levy aforesaid, until said judgment and interest and said fees, poundage and disbursements of the Sheriff of the County of New York shall have been paid in full; if, however, any application is made for the dismissal or discontinuance of the above entitled action, prior to such dismissal or discontinuance, the balance remaining unpaid upon said judgment and interest and said fees, poundage and disbursements of the Sheriff of the County of New York shall immediately become due and shall be paid by the receiver out of the funds and assets of the estate herein available, prior to its discharge, excepting, however, that in the event that either a voluntary or an involuntary petition in bankruptcy be filed by or against the defendant herein, and an adjudication be [fol. 61] had thereunder, then as to only any balance then remaining unpaid and not due hereon, the rights of the respective parties shall not be prejudiced, and it is further

Ordered, adjudged and decreed that the rights, liens and claims of Pfister & Vogel Leather Company under the said judgment, execution and levy shall continue in full force and effect until the said judgment and interest and the said fees, poundage and disbursements of the Sheriff of the County of New York shall have been paid in full, and it is further

Ordered, adjudged and decreed that Pfister & Vogel Leather Company shall have the right, upon a default in the making of any of said payments, to proceed with the enforce-

ment of its rights and legal remedies under said judgment, execution and levy in the usual course, and it is further

Ordered, adjudged and decreed that Pfister & Vogel Leather Company, upon payment in full of the said judgment and interest and said fees, poundage and disbursements of the Sheriff of the County of New York, execute, or cause to be executed, a satisfaction of the aforesaid judgment upon payment thereof as above stated.

Jno. C. Knox, U. S. D. J.

[fol. 62] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

MINUTES ON THE HEARING BEFORE JUDGE KNOX HELD ON MAY 8, 1931

Before Hon. Jno. C. Knox, D. J.

(Courtroom No. 2, Woolworth Building)

New York, May 8, 1931, at 4:30 P. M.

Appearances:

Irving Trust Company, Equity Receiver, by A. W. Copp, Esq.,

Olcott, Holmes, Glass, Paul & Havens, Esqrs., Attorneys for the Receiver, by Joseph Glass, Esq.,

Milton C. Weisman, Esq., Attorney for Creditors' Committee.

Nathan D. Stern, Esq., Attorney for Defendant.

Lesser Brothers, Esqrs., Attorneys for Pfister & Vogel, by Benjamin Lesser, Esq.

[fol. 63] Carter, Ledyard & Milburn, Esqs., representing Vincent Astor, by John P. Allee, Esq.

Baldwin, Hutchins & Todd, Esqs., John S. Wise, Esq., of counsel, Attorneys for Hermann Loewenstein.

Alexander P. Plaskow, Esq., representing attorneys for the National Safety Bank.

Mr. Glass: If it please your Honor, this matter is on today pursuant to the provisions of the original order ap-

pointing the Receiver in the Morris White, Inc. matter, the purpose being to discuss whether or not the receivership shall be made permanent.

Since the date of the appointment of the Receiver in this matter there have been continued negotiations on the part of the Creditors' Committee with the defendant and with representatives of the defendant who are interested in the purchase of the assets in connection with a proposed reorganization, and the matter has taken upon considerable time and it has finally crystallized in a proposed reorganization plan, which has been gotten only this afternoon into proof form ready to be sent to the printer and ready to be presented to your Honor probably tomorrow, or Monday at the latest, with a request that an order to show cause issue, addressed to the various parties in interest, to show cause why the plan, or any other plan that may be presented, should not be adopted.

[fol. 64] In view of that situation, and in view of the important bearing that consummation of any reorganization plan has upon the question as to whether this equity receivership shall be made permanent, I respectfully suggest to your Honor that this matter be postponed to a date subsequent to the return day which we shall ask your Honor to fix for a hearing upon the proposed reorganization.

The Court: Does anyone want to be heard on that suggestion of Mr. Glass?

(No response.)

The Court: How long do you think I should allow for consideration of this proposed plan of reorganization?

Mr. Glass: Well, I would say, your Honor, that in so far as the majority of creditors are concerned, and I think there is substantially—I know that there is substantially over 50 per cent of the creditors represented on the Creditors' Committee—their individual counsel have sat in on the meetings and they are fully familiar with the situation; there is desirability in the fixing of as early a date as possible, from several points of view. The Receiver does not want the responsibility of continuing this business any longer than it must have it. The proposed purchaser feels cramped by the restrictions of the receivership operation. Now, I would suggest to your Honor that a period of notice

not in excess of two weeks would be adequate, in view of the fact that the creditors are all within not more than one day's mail from New York City.

The Court: Do you want this hearing adjourned until after that adjourned date?

[fol. 65] Mr. Glass: Yes, if your Honor please; and we would ask, in that regard also, that your Honor fix a date—period of notice for the filing of claims, so that an appropriate bar order may be entered if the plan is consummated.

The Court: I do not think you had better try to have your return before the 1st of June. This is the 8th; that is about a little over three weeks.

Mr. Stern: We could get that notice, if the Court please, out to creditors certainly not later than Wednesday, Mr. Glass?

Mr. Glass: Well, if it should go to the printer tomorrow, it could be gotten out Monday.

Mr. Stern: Time is of the essence to the defendant here, because it is a seasonable business and we will lose the season if we don't get it out promptly.

The Court: This is the 8th day; that leaves only twenty-three days in this month anyhow, and you won't have your notice out before Monday. Put it down for the first week in June some time.

Mr. Stern: May I suggest, sir, that ten days' notice, instead of two weeks, would work the same result, certainly, as two weeks, and would make this——

The Court (interposing): That is pretty close time.

Mr. Stern: I don't want to press it, but it would make a difference in this situation.

Mr. Weisman: I might say, in that connection, your Honor, that the facts, aside from the legal form of the offer, have been known to the vast body of the creditors for exactly a week and two days already; so that in this case, the general terms of the offer have been known; but the delay that has ensued during the past week has been—[fol. 66] or nine days—has been due to the fact that counsel for the Creditors' Committee and counsel for the offerer and counsel for the Receiver and the individual counsel of various of the creditors had to be satisfied with regard to the form of the offer, the wording and so forth; and that

in the opinion of the Creditors' Committee it is very desirable that this matter, if it is to be consummated, be consummated with all reasonable, and not undue, despatch; and under those circumstances the Creditors' Committee does feel that ten days' notice would be ample, since the terms of it are known to most of the creditors already.

Mr. Glass: May I suggest to your Honor in that regard, that upon the return day, if ten days' notice is not deemed reasonable, that upon the return day, should there be any appearance on behalf of any creditor, any showing that the notice was too short, that at that time the matter might be adjourned?

The Court: Well, I would much prefer to have it long enough so that there would be no reasonable chance—when do you think you can get these notices out?

Mr. Glass: We can get the notices out by Monday, in case we can get them to the printer tonight.

The Court: I think you had better put it down two weeks from Monday, then.

Mr. Glass: Two weeks from Monday, your Honor?

The Court: Yes, I think you had better.

Mr. Glass: And returnable in this Courtroom, your Honor?

The Court: Yes; at about this hour, I guess.

Mr. Glass: Then does your Honor desire to make the adjourned date of this motion returnable contemporaneously?

[fol. 67] The Court: Yes, I think so—that is, as to whether the receivership should be made permanent?

Mr. Glass: Yes?

The Court: Yes. How much time do you think you had better fix for the filing of claims?

Mr. Glass: The present order that is entered grants three months from the notice. I do not see any substantial prejudice to the defendant or to the purchaser if a fairly reasonable notice is given there, because the transfer of title is not delayed by virtue of the time——

The Court: No, I should think not.

Mr. Glass: I should suggest, in that regard, sixty days, your Honor.

The Court: All right. Is that all?

Mr. Lesser: I don't know whether Mr. Glass is prepared to deal with the matter of the Pfister Vogel lien.

The Court: I think it had better be disposed of now.

Mr. Glass: The situation in that regard is this: We have taken that matter up with the Receiver and it is a matter of real concern to the purchaser more than the Receiver, because the terms of the proposed offer contemplate the current payment of $4,000 weekly. If this plan is consummated in two weeks, the most substantial portion of the judgment will be payable under the terms of the proposed stipulation, before the transfer of assets is made to the new corporation, and necessarily, the Receiver could only transfer subject to any liens of any lien creditors.

The Court: Have you paid anything on account of it yet?

Mr. Glass: We have not, your Honor.

[fol. 68] Mr. Lesser: Nothing.

Mr. Glass: Now, I have discussed the matter with Mr Stern this afternoon, and as I left it with Mr. Stern, Mr. Stern was going to communicate with Mr. Lesser—he did not know that Mr. Lesser was going to be here—and see if anything could be worked out for the continuing of these instalment payments after the transfer of the property, pursuant to the reorganization plan.

Mr. Stern: Judge Knox, as I see the situation now, Mr. Lesser has tendered a stipulation which provides for these instalment payments, and then provides that in the event of the reorganization, the balance of the debt shall immediately become due and payable. My thought in that regard is simply this: If this reorganization did not go through—I have said it frankly to Mr. Lesser—that there would be a bankruptcy petition filed and his lien will be dissolved, because it is within the four months' period. Now, if he is willing to stipulate that he take $4,000 a week until this amount is paid, I think it is reasonable to suppose that I will be able to prevail upon the client to the extent of having that done; but if this plan don't go through, there is no reason in the world why he should get a preference by reason of this.

Mr. Lesser: We have been all over that, Judge, so many times, and I am here——

Mr. Stern (interposing): But you have not with me, Mr. Lesser.

Mr. Lesser: Not with you, no, but I have been with the Receiver; I have met all the views of the Receiver and I

have prepared stipulation after stipulation, and the final one I understood was to be satisfactory, and here we are, as your Honor stated—wanted to know whether we have [fol. 69] been paid anything, and we have received nothing. I have not interfered with the Receiver; I have let him go ahead and conduct this business and the Sheriff has done nothing; and doesn't it seem fair that after the Receiver has agreed upon the thing and we have spent our time, hours discussing it, and we have got together on the stipulation, that it should be filed? That is the reason I came over here today; I thought the only way I could dispose of it was coming right before you, and here is our form of stipulation which I drew up, which is even a modification of the one I showed you before, and it was modified at the request of the attorneys for the Receiver——

Mr. Glass (interposing): May I say that the Receiver has taken the matter up with Mr. Christiansen and the view there is that the Receiver should not consent to this unless it be with the consent of the defendant corporation and the Creditors' Committee; and that is the reason why I took the matter up with Mr. Stern this afternoon prior to the hearing.

Mr. Lesser: We are not concerned with that situation; that situation will take care of itself when we reach it; but I have understood that this was agreeable—this is about the sixth stipulation we have drawn.

(After colloquy at counsel table, not heard by the reporter.)

Mr. Lesser: Another question of the amount to be paid after the Receiver steps out, that has to be taken up with my client——

Mr. Stern (interposing): There is the nub of the whole situation, if the Court please.

Mr. Lesser: If they had paid up the amount they agreed to pay, we would have had three-quarters of our claim paid by this time.

[fol. 70] Mr. Stern: You could not have it because they didn't have the money to pay it, number one. Number two, the difficulty of the situation is that the moment we get this reorganization plan in shape so that we can perfect it, then if Mr. Lesser acts again, as he has acted in the past, it is going to be a case of the man on the black horse: We

either have got to deliver something we have not got in cash, or the plan is going to fail. All I can say to Mr. Lesser is, that as a result of my conferences with the client, if this plan does not go through, he is not going to have the benefit of that lien; it is going to be dissolved in the Bankruptcy Court, if it does not go through.

Mr. Lesser: I am not so sure of that.

Mr. Stern: You are not so sure of that? Maybe you have some law that I don't know anything about. Generally speaking, that this lien is dissolved by a bankruptcy petition within four months. The lien was filed the 1st of April. We have still got plenty of time to dissolve it.

The Court: I think I will do something about this.

Mr. Lesser: Here we are, months later, I have not received a cent; and I think Mr. Glass will agree with me that I have done everything possible to assist the Receiver, to facilitate him, not to interfere, and do nothing; isn't that so?

Mr. Glass: That is so, sir.

Mr. Lesser: And here we are, month after month, first the Receiver and Receiver's counsel, then we are thrown back to Mr. Stern, as to whether the new organization is agreeable.

Mr. Glass: May I say to your Honor in that regard, if Mr. Lesser had heeded the suggestion we had made, he would have been much further now than he is. We did [fol. 71] suggest, without any commitment, that the disposition of the pending motion be held in suspense, and in the interim, with the consent of the Creditors' Committee and counsel for the defendant, weekly payments to be made in this very sum, and the entire question of Mr. Lesser's client's rights be left in suspense. He certainly would be in an excellent strategic position——

Mr. Lesser (interposing): I would have had $16,000. And a couple of weeks longer, I will have my claim paid in full, under their own statement of what I should have received; and because I have been decent and we have held off and done nothing—because I know what it means when a Sheriff goes in and starts a sale and begins to lot up—and I have been reasonable and I didn't want that done—I told you candidly, I did not want the Sheriff to go in and take the stuff out, because I know what that means, and the Receiver——

The Court (interposing): I think I will make some adjustment, or something of the kind.

Mr. Lesser: Now, what objection have you got to this order? Now, I am talking to the Receiver.

Mr. Stern: If the Court please, here is the situation: How is he any worse off? If he drives us hard enough, he is going to drive us into bankruptcy and he will destroy his own lien. If he will only ride with us for another two weeks, he will get all his money. In the meantime, the Receiver says "I will give you some money on account; I do not want to be committed to continue it."

Mr. Lesser: Judge, we are arguing the very question we argued when I first made my application and asked for [fol. 72] additional time to submit an affidavit; we are right where we were at that time; and now, after the Receiver has delayed this and delayed this until today, here we are now discussing it with the new organization——

Mr. Stern (interposing): No, Mr. Lesser——

Mr. Lesser (continuing): I think it is only fair to us that we take the situation as it is. We have an Equity Receiver here; we have a situation where I say that the rights of this judgment creditor must be protected by that Equity Receiver and our lien must be protected.

The Court: It is coming ahead of the equity proceeding; there is no doubt about that.

Mr. Lesser: Here we are where our rights should be protected, and the Receiver itself has delayed us and delayed us, until we are here, months later, and have nothing; and then they want to throw us over, back upon the debtor, or some concern that succeeds it.

Mr. Stern: No, we do not; that is not putting it correctly, Mr. Lesser. There is more than ample there to pay him 100 cents on the dollar; we have not interfered with it, and we could not interfere with it. Now we say to him: "If you give this plan a chance to be presented to the creditors, you are going to get 100 cents on the dollar. If you do not give it a chance to be presented to the creditors, you are going to muss your own nest, because we are going to be in bankruptcy."

Mr. Lesser: Oh, we were told that months ago; we have passed that months ago.

Mr. Stern: And during all this time we have struggled, and that work has resulted in this proposed plan, the work of half a dozen or more lawyers——

[fol. 73] Mr. Lesser (interposing): They have jockeyed me along to where I am out of Court and I am back again in the State Court proceeding. I say that is what I object to. I want my liens taken care of by this Receiver as he agreed to do.

The Court: I think that your plan of reorganization ought to provide that if it goes through, that some adequate provision be made to take care of any unpaid amount on this judgment at that time.

Mr. Stern: It does provide that, if the Court please.

Mr. Glass: The plan expressly provides, your Honor, that the Receiver transfer only his right, title and interest, subject to the rights of all preferred and lien creditors. Obviously, the Receiver could not transfer anything but that. But here is what appears to me as the reason I cannot fully understand sympathetically Mr. Lesser's point of view: It is perfectly obvious, from the date that has been fixed here, that three weeks must elapse before the plan is consummated. In three weeks, under the proposed arrangement, Mr. Lesser's client will receive approximately 50 per cent of its indebtedness. All of the creditors we believe are going to receive no cash, and they accept the reorganization on that basis. In three weeks Mr. Lesser's client will be paid 50 per cent in full; and then this Receiver cannot part with title to these assets except subject to Mr. Lesser's right to collect the balance at that time. And I will say this, talking for the Receiver: that certainly the Receiver is not going to part with any assets unless it is fully protected insofar as the rights of Mr. Lesser are concerned at that time. Now, it seems to me that the course that Mr. Lesser should follow as a practical matter is very obvious——

[fol. 74] Mr. Lesser (interposing): Well, you, or your office, told me that my stipulation was all right, and I sent it to you, the last one, with all these amendments; and that is the fourth stipulation I sent to you; and here I am jockeyed along, right down to this last minute——

The Court (interposing): I think they should either go into the bankruptcy matter now and try out the composition agreement, or else you ought to make some provision for the payment of this lien so that he will have his money when this thing goes through.

Mr. Lesser: That is all I want.

The Court: I think he ought to——

Mr. Lesser (interposing): And that is all that order provides for. In fact, we discussed with them certain clauses in there. They feared that the Receiver might be personally liable, and I put in clauses there that said it must be as to the available assets. They discussed the word "available." That is four days ago; and they said "That is O. K." and they told me the Trust Company were satisfied; and here we are, and we have not received anything.

The Court: I think I will do one or the other.

Mr. Lesser: If this is agreeable to you, let us submit the order to the Judge and——

Mr. Glass (interposing): The order in its present form?

Mr. Lesser: Yes; your firm said it was satisfactory.

Mr. Glass: I don't know who of my firm made that statement.

Mr. Lesser: Mr. Weiser did.

Mr. Weiser: I didn't say that to you, Mr. Lesser. I said I will take it up with the Receiver, in view of some objection to the clause they wanted to put in.

[fol. 75] Mr. Lesser: And didn't you call me up and tell me it was passed by the Receiver?

Mr. Weiser: No.

Mr. Lesser: I don't know who I am talking to—it is either the Receiver or somebody in the Receiver's employ, or the Creditors' Committee, or I don't know who—now I am thrown back to the attorney for the reorganization.

The Court: All I can say is, if your people want to set that judgment aside, file a petition in bankruptcy and go ahead.

Mr. Lesser: And we will fight it out there; I am satisfied.

The Court: Or else make some provision to take care of this, if this thing is going through.

Mr. Stern: That is the difficulty, Judge Knox——

The Court (interposing): I cannot do it—I assume that Mr. Lesser has something here. Now he is in equity; he is entitled to 100 cents on the dollar, and if you people are interested in it, want to avoid bankruptcy, why it is worth the price that you are asked to pay, I reckon.

Mr. Lesser: Why, Judge, the Receiver itself admits that it would have paid us up almost by this time.

Mr. Weisman: May it please your Honor, I represent the Creditors' Committee, and as it has been stated to your Honor, almost in excess of half of the creditors, in amount, are on that Creditors' Committee. Now, I cannot understand Mr. Lesser's——

The Court (interposing): I don't care whether you can understand it or not——

Mr. Weisman (interposing): I want to point out to your Honor that he is adequately protected——

The Court (interposing): I know, but he wants his money; I don't blame him, as far as that is concerned. [fol. 76] You must either fish, cut bait or go ashore. You are going to pay his judgment or else go into bankruptcy, and void it if you can.

Mr. Stern: What does your present stipulation provide, Mr. Lesser? I have not seen it.

Mr. Lesser: I have gone over and over all of it with the Receiver's counsel so often, I think we could almost read it by heart. The last item we had is as to "available assets." I told the Receiver I did not want them to be held personally liable; I said "All right; put in the word 'available,' ". We have not been antagonistic; we certainly have been trying to help it along as much as we could. If my client is satisfied, I am.

Mr. Stern: That is, perhaps, the best we can do, Judge Knox. As you say, we are hors de combat; we have got to take it or leave it. This gesture of being so generous, I know that Mr. Lesser won't perform, possibly because his client won't let him; because before this went into receivership, I tried to get him to wait, and while he is always amenable, his client is very obdurate.

The Court: I don't know what you have here in the way of assets or anything of the kind, but if you want to void the judgment, if you go into bankruptcy you probably can set it aside.

Mr. Stern: The reason we have not, sir, is because the vast majority of creditors, both in number and amount, did not want to go into bankruptcy and they are willing to pay the penalty.

The Court: Then they ought to go ahead and pay it.

Mr. Stern: That is right; but the difficulty is, the client has to pay it, and the cash is not available.

Mr. Glass: May I ask that Mr. Lesser and Mr. Stern confer——

[fol. 77] The Court: You had better confer. If you don't do something on this by Monday morning, you either pay this money or go into bankruptcy.

Mr. Stern: You don't mean pay it in full; you mean pay it in instalments?

The Court: Yes.

Mr. Stern: Well, I think that we can arrange it, Judge.

(Adjourned to Monday, May 25, 1931, at 4:30 P. M., Courtroom No. 2, Woolworth Building.)

MINUTES ON THE HEARING BEFORE JUDGE KNOX HELD ON MAY 25, 1931

[Title omitted]

Before Hon. Jno. C. Knox, D. J.

(Court-room #2, Woolworth Building)

New York, May 25th, 1931, at 4:30 P. M.

Appearances:

Olcott, Holmes, Glass, Paul & Havens, Esqs., Attorneys for Receiver and Complainant, by Jerome Weinstein, Esq.

There are no other appearances by any other counsel or creditors.

On motion of counsel for the Receiver, the hearing was adjourned to Tuesday, May 26, 1931, at 4:30 P. M., Court-room #2, Woolworth Building.

[fol. 78] MINUTES ON THE HEARING BEFORE JUDGE KNOX HELD ON MAY 26, 1931

[Title omitted]

Before Hon. Jno. C. Knox, D. J.

(Court-room #2, Woolworth Building)

New York, May 26th, 1931, at 4:30 P. M.

Present:

Olcott, Holmes, Glass, Paul & Havens, Esqrs., Attorneys for Irving Trust Company, Equity Receiver, by Joseph Glass, Esq.

Nathan D. Stern, Esq., Attorney for Defendant.

Max E. Sanders, Esq., Attorney for C. A. Auffmordt & Co.

O'Connell & Butler, Esqrs., Attorneys for G. Levor & Co., Inc.

Baldwin, Hutchins & Todd, Esqrs., Attorneys for Hermann Loewenstein, John S. Wise, Esq., of Counsel.

Charles F. White, Esq., Attorney for Ocean Accident Guarantee Corporation.

[fol. 79] Isidore Vise, Esq. (7 South Dearborn Street, Chicago, Ill.), Attorney for J. Greenbaum Tanning Company.

Marlow & Hines, Esqrs., Attorneys for B. Altman & Company, by Richard Lincoln, Esq.

Saul S. Myers, Esq., Attorney for Creditors; Charles H. Tuttle, Esq., of Counsel.

Milton C. Weisman, Esq., Attorney for Creditors' Committee.

George Z. Medalie, Esq., U. S. Attorney, by Morton Baum, Esq., Assistant U. S. Attorney.

General Co-nsul's Office, Washington, D. C., by Mr. Cash.

Bureau of Internal Revenue, by Mr. Sherriff.

Mr. Glass: Your Honor, this matter comes on for hearing pursuant to the conditions of the order signed by your Honor, requiring all parties interested to appear at this time and place, to show cause why a certain offer, dated April 29th of this year, for the purchase of the assets of the defendant here, should not be accepted, or why any

other offer that may be presented at this time should not be considered. The present offer, a copy of which has been sent to all creditors, who presumably are all familiar with the terms, has been filed. I will just briefly sketch the terms.

[fol. 80] The subject matter of the sale is the assets of the defendant company, and all of the right, title and interest of the Receiver in those assets. The purchase is subject to all existing assignments of accounts, and is also subject to the assumption of payment of the following obligations by the purchaser: First, the costs of administration; secondly, the liabilities of the Receiver; thirdly, the payment, or the procurement of the discharge of the Receiver from any liability with respect to Federal Taxes, and similarly with respect to New York taxes; and lastly, with respect to any lien creditors, there being one lien creditor, a judgment creditor. A further obligation is imposed on the purchaser of paying the fees of the counsel for the Creditors' Committee; and those are all the terms, other than the consideration flowing to the creditors.

The following are the considerations flowing to the creditors:

The plan contemplates the payment of creditors in full, in the following manner: 20 per cent of their claims, as allowed in this proceeding, in notes—four notes of 5 per cent each, payable at intervals of six months, commencing January 1st, 1932. The balance of their proved claims, to wit 80 per cent in preferred stock of a corporation to be organized, which corporation is to assume the obligations of the purchaser. I am not going into the details of the preferred stock. They are set out in detail in the order.

The offer further requires the new corporation to file its notice of appearance, subjecting itself to the summary jurisdiction of this Court, for the purpose of enforcing the terms of the offer.

That is a brief outline of the terms of the offer.

The Receiver is, of course, a neutral party to any plea, [fol. 81] and is not interested in the adoption of this plan, but is interested in the termination of the Receivership and its responsibility at the earliest moment possible, consistent with the consideration of the offer.

If there are any further questions on the part of creditors with respect to details of the plan, I would be glad to answer those questions.

The Court: What is the amount of the liabilities that are admitted, to the creditors?

Mr. Glass: The total liabilities are, pursuant to a certificate which is presented with the order to show cause, $1,072,000. That includes some $100,000, in round amount, of liabilities of the United States Government, for which a claim has been filed, and some $50,000——

Mr. Stern: $57,000.

Mr. Glass: —interest and penalties due to New York State.

The Court: They are preferred claims?

Mr. Glass: Yes.

The Court: What is the amount of the other preferred claims that the purchaser will have to discharge, if there is anything available for the notes and stock?

Mr. Glass: There is an obligation to one judgment creditor, on which there have been payments, and an unpaid balance due of the sum of $15,000. There is no further assumption of liability, except a claim is involved in the assumption of the existing agreements under which accounts have been assigned, the new corporation assuming those agreements which contemplates the carrying over the assignments into the new corporation.

The Court: Is the proposed purchaser to pay by cash, to pay administration costs, or is it coming out of the earnings [fol. 82] of the new corporation?

Mr. Glass: As I understand the situation, I do not believe the offer contemplates the introduction of any new cash, or new assets, into the new corporation. I do not believe that the offer contemplates anything further than this. There is a large unrealized, unmanufactured inventory, as I am advised by the Creditors' Committee, the large element of value which is preserved into the new corporation is the factor of management and experience in the conduct of the particular business by the present persons interested.

The Court: What is the amount of money borne by the new corporation for administration costs and preferred claims prior to the time which you mention, on account of those notes and stock?

Mr. Glass: The present situation in that regard, your Honor, is this: The Receiver has a present balance of $54,000 in cash, over and above its liabilties. It has $67,000 in free accounts receivable, and the practical equipment of cash. That will be in the corporate treasury, less a deduction of administration costs, that part of the costs which involve allowances.

The Court: Is there any estimate as to what these costs will be?

Mr. Glass: Nothing but a rough estimate, and I discussed it with the Receiver yesterday, and the figure is supposed to be approximately $50,000.

The Court: That is the Receiver's and counsel fee, and all?

Mr. Glass: The immediate charge against the preferred stock against the new estate will be $100,000, tax liability to the Government. The representatives of the Government are here prepared to consent to the acceptance of this offer [fol. 83] upon condition that the new company assumes the debt, and also I understand to the instalment settlement of the debt on rather liberal terms, stretching over a period of time.

The Court: If these properties of the defendant were put up at auction and sold, have you any idea as what might be realized in the form of cash?

Mr. Glass: That will be exceedingly difficult to estimate on account of the nature of the assets. The finished merchandise on hand at the present time, as well as the prices that is about $100,000, if sold in the regular course of business. The raw material value, as a going business, will approximate $300,000. What it would realize on a forced sale is a difficult matter for the Receiver, or any one else, to say; leathers, miscellaneous ornaments, and so forth. The experience of the Receiver up to this time has been that prices have been during the Receivership administration, falling.

The Court: And are liable to fall still further, I imagine. What is the percentage of claims represented by those who form the Creditors' Committee?

Mr. Glass: Approximately $589,000, of $1,072,000. Those figures are approximate.

The Court: And the Creditors' Committee, I understand, favors the reorganization along the lines you suggest?

Mr. Glass: The Creditors' Committee is responsible for the promulgation of the reorganization plan.

The Court: What percentage of the remaining creditors have agreed to the plan?

Mr. Glass: That is a matter I am in no position now to make a statement. I understand a large majority of the [fol. 84] creditors are present, and will be represented at present.

Mr. Tuttle: I represent certain creditors who are opposed to this offer. At the proper moment, I would like to be heard.

The Court: You may go ahead. I will have to leave, as I find I have another appointment, but I can stay for the next 25 minutes.

Mr. Tuttle: I will curtail myself, all right. I represent the National Surety Company, the Indemnity Company, the Ocean Guaranty and Accident Company and the J. Greenbaum Tanning Company, and I am told they have claims of approximately $125,000.

This offer is opposed on a number of grounds. In the first place there is no intelligent statement presented for its consideration, by the moving papers. All we have here presented in the papers is an estimate made by certain accountants, as of April 6th, which at the time the corporation entered into the Receivership, liabilities are stated to be $1,072,000. There is no estimate of the assets; there is no estimate of the expenses; there is nothing to indicate how much may or may not be realized, although the Receivership has been proceeding for over a month and a half. There is no statement concerning the result of the Receivership, how much has been received, how much has been sold, how much has been ascertained in the way of debts; indeed, there is not even a schedule of liabilities attached here.

There has come into my possession a statement prepared by an accountant, as of April 6th, 1931. This statement of course is not a statement of the affairs as found by the Court in the Receivership, and it is interesting to observe [fol. 85] that the current liabilities are here stated as $1,050,000, of which out of the three principal items, two are notes payable to the banks, notes payable to the banks that are secured, amounting to $179,000, and are secured out of the accounts receivable to the extent of $251,000; and notes payable to the banks unsecured, to the extent of $262,000,

making, as your Honor will perceive, something like $450,000 due to the banks, the major portion of the amount stated by the gentleman who has just spoken.

It is therefore easy to see that the banks which make up the major portion of the claims in favor of this settlement, would be in favor of it.

When we turn to the assets side of it, we find that there are accounts receivable to the extent of $301,000, of which you will perceive all but $50,000 has been eliminated by accounts pledged to the banks. The rest of the assets are entirely negligible. The cash on hand is practically only $5,000, and certain merchandise inventories. Those inventories are stated at the figure of $1,241,000. The truth about them was stated. After the meeting, the second meeting of the Committee, at which this certain matter was considered,—and I have a memorandum made by one of the persons who was present representing, I think the National Surety Company itself, of which I will just read an extract: After a lengthy discussion, and after two meetings, the Committee has decided that the total amount realizable, and in face of litigation, of all the assets, both current and total, would be the sum of $182,000—not enough, of course, to, or barely enough to pay off the secured liabilities to the banks. And in addition to that——

The Court: Does that mean that the realization would include the collateral pledged at the banks?

[fol. 86] Mr. Tuttle: That is the way I understand it.

Mr. Glass: That is erroneous.

Mr. Tuttle: If it is, I am glad to be corrected in respect to the matter, but I read what is stated. Here is a memorandum made at the time by a person who was there, that the total amount realizable for any debts remaining of all the assets, would be that sum.

In addition let me call your Honor's attention to the fact that this same statement as of April 6th, 1931, by counsel employed as counsel for the Receiver, states that the Federal Income tax amounts to $80,000, the New York State Franchise tax $57,000. There is due to employees $3,000, accrued payroll of $15,000; all of which, I suppose, will be entitled to preferences, an amount which would nearly absorb the amount stated to be the total amount realizable at this time.

Now let us turn around this proposition to see what it really is, because it is, in essence, nothing at all except a proposition to buy this Court's Jurisdiction, and these creditors control, which are at the present time about to continue that control, in the hands of the existing management, which has brought about the bankruptcy here, which is nearly 100 per cent. As I look at the figures and the terms of this offer, I cannot understand how the channel of administration here happens to be a Receivership, and not a bankruptcy. Indeed the creditors are entitled to an examination under Section 21-A, to find out how this kind of assets has come about.

Now turn to the proposal which is presented, as I think to your Honor, without any figures from the offices of the Receiver at all, without anything from which anybody can [fol. 87] form a judgment, and your Honor, perhaps the statement as received, is no answer. The offer is from one Louise White, who I understand is the wife of Morris White. She does not set forth that she has any financial responsibility whatever. She proposes to organize a new corporation. The corporation has no assets and no capital. That corporation is to be controlled by a board of directors, of which it is said that the creditors are to have two out of a minimum of five. There is to be a capitalization of 10,000 shares, of which 1,000 is to be common stock, without par value. It stated that stock is to be disposed of for such consideration and purposes as the board of directors will elect. And it is to have the sole voting power; in other words, that common stock which is to have the sole voting power, and to have the control of this corporation, is by a board of directors controlled by representatives of the past management and the prior stockholders of the existing corporation, in effect.

Now, when it comes down to what may be done by the board of directors, let me call your Honor's attention to this: It says that the holders of the common stock shall have (1) the sole and exclusive right to vote for any purposes, any corporate purposes; and if that be not enough to strip these creditors of any control, it says that the preferred stock, as stockholders, shall not be entitled to vote on any question of increase or decrease of common capital stock, nor the right to vote for any directors, except—note this language—to vote for directors who by the certificate of

incorporation of the new corporation—a certificate which is not presented to your Honor—are at any time to be [fol. 88] elected by the holders of the preferred stock, nor shall they be entitled to vote on anything concerning mortgaging the property, and/or franchises of the corporation, or for the sale of the franchise or the property of the corporation. They shall not be entitled to vote for any proposition for exchange of name, nor any question nor matter of voluntary dissolution, under Section 105 of the said Corporation Law. And it is further specified that the directors shall have the exclusive and sole right to employ and choose any such corporation, and fix the amount of its salary, and of such executives of the new corporation.

Mr. Stern: There are about four out of five——

The Court: Go ahead.

Mr. Tuttle (reading a short extract): What are the creditors to receive? They are to receive four notes, each for 5 per cent of their claims, payable without interest, the first is payable in January of next year, and each of the succeeding three notes is payable in a series of six months thereafter. They are also to receive 80 per cent of their claims in preferred stock of this corporation.

Your Honor will perceive, therefore, that not a nickel in cash, or nothing which is the equivalent of cash at the present time, is being tendered. They are being paid in paper, only 20 per cent of which even expresses an obligation, and that obligation rests in a corporation which is what? I ask what that corporation is? The answer must be forthcoming from these papers. There is not a line or syllable which shows what the assets are worth. We may have names, when they say the property is a going concern, but what is it, and what is it worth? Why should the [fol. 89] creditors be called upon to even consider it at the present time? I cannot see that there is anything before the Court, and I cannot conceive that the Court will regard compelling the creditors to accept such a proposition as this.

The Court: What do you think might be had out of it if a liquidation takes place?

Mr. Tuttle: That is a question I cannot answer. There is nothing here on which to answer it, and that is the reason why I was——

The Court: As far as I can see, outside of the assets to which Mr. Glass refers, namely, the cash in hand and the finished merchandise and the stock of raw material that may be on hand, there is nothing but good will and the ability of Mr. White, if he is to continue in the management, to carry on.

Mr. Stern: That is correct.

Mr. Glass: I do not rise to take issue with Mr. Tuttle as to the merits of the plan, but simply to correct certain misconceptions as to the plan. Mr. Tuttle is unfortunate in the fact that he is entering the picture at a rather late date, and therefore he has not attended previous meetings at which frank discussion was had, and which has prepared the Receiver and the creditors. In a very short time after the Receiver was appointed, a meeting of all the creditors was called. The very balance sheet which Mr. Tuttle refers to was presented by myself personally, on behalf of the Receiver. The assets were commented on, purely out of the liabilities; a statement was made and sent to each one, of the views of the Receiver with respect to the collectibility value, and the facts have been presented. It was at that meeting that the Creditors' Committee was formed. That Committee consists of nine representatives, I think, only two of [fol. 90] whom represent banks, and the remaining seven represent the largest creditors.

The Court: Who are they? The names of the creditors who have assented and are represented on the Creditors' Committee?

Mr. Stern: Mr. Michael Hollander represents one of the New Jersey banks to the extent of $145,000. Mr. Jephson, who represents the Textile Banking Corporation, that is a merchandise creditor, and a number of creditors. Mr. Weisman, representing the bank; Mr. Rosenberg, who represents one of the creditors here, the Artistic Weaving Company, who is a creditor for—Mr. Rosenfeld, for $33,000, representing the Rex Novelty Works; George Bernheim, representing a creditor for $42,000 and over; Jack Schoenfeld, representing the Artistic Wire Company, a creditor to the extent of $30,500; Mr. Quigan, a creditor for $14,000 and over; Dan Hausman and N. Hausman, creditors for $20,000; Mr. Jephson, a creditor for $40,000. Those claims total about $500,000.

The Court: Excluding the banks?

Mr. Stern: The banks claims are $250,000, in round figures. So you have over $300,000 of merchandise creditors, and slightly less than $300,000 of bank creditors who are on this Committee, who did this work.

Mr. Tuttle: May I rise?

Mr. Stern: I did not mean to interrupt, Mr. Tuttle.

Mr. Tuttle: I welcome any interruption that adds to my enlightenment, or that of the Court.

I would like to know if the Creditors' Committee was formed before the bill in equity was filed?

Mr. Stern: The Receiver called a general meeting of creditors at the assembly room in this building, the Merchants [fol. 91] Association. At that meeting a resolution was adopted that a Creditors' Committee be appointed. One suggestion was five, then another was seven, and another was nine. Those men were nominated by the body of creditors there assembled, which represents practically all the creditors as nominated at the meeting, presented to the meeting, and by the presiding officer, which motion specifically mentioned those men as members of the Committee.

Mr. Sanders: I appear for C. A. Auffmordt & Company. The facts stated by Mr. Stern are absolutely correct. A Committee was formed before the general meeting, and the Committee was approved at the meeting——

Mr. Stern: You are wrong. I was there, and you were not.

Mr. Tuttle: Probably I am throwing an apple of discord into that matter.

Mr. Weisman: I am counsel for the Creditors' Committee. This Creditors' Committee was neither formed, nor discussed, nor arranged at any time prior to the Equity Receivership. It was formed and made up at a meeting called by the Receiver.

A Voice: May I ask Mr. Weisman, why was the Committee appointed on that day?

Mr. Weisman: Prior to this Receivership there was a Committee, some of whose members succeeded to the Committee——

The Court: How many of them succeeded?

Mr. Weisman: There were only three on the Committee. An Equity Receivership was planned at the time it was attempted to discuss this thing, by a Committee consisting of

two representatives of the banks, and three representatives of the merchandise creditors.

Mr. Tuttle: May I make this one point: What we want, these creditors whom I represent, is a fair opportunity to [fol. 92] examine, under oath, the people who have appeared, about this complete 100 per cent financial bankruptcy. We do not want to have any proposed offer of settlement put over on us by any group, large or small. That is why we are opposing this. How about the assets? What is the suggestion by means of which we can know what is really being done here. We are asked to take a pig in a poke, and a big pig. I ask for an opportunity to examine, before it is finally concluded, under oath, the members of the Committee. I would like to find out why it is that the several large financial institutions here are willing to take this pig. I would like to find out what side agreements there are in the consideration, to even make possible such a consideration.

Mr. Stern: That is the last thing we ought to be told of, and do not——

Mr. Tuttle: It is probably because——

Mr. Stern: Now, may I be heard——

The Court: I don't think we can hear you. I think we will put this over until tomorrow morning, at half past ten.

Mr. Tuttle: At half past ten I believe I have to put my client on the witness-stand. If your Honor will make it after Court, I will be happy to attend.

The Court: I cannot do that. I have tomorrow free, practically the whole day.

A Voice: And at 10.30 I have an examination of witnesses.

The Court: They will have to wait. I am sorry.

Mr. Tuttle: Will your Honor make it 10 o'clock?

The Court: Yes, I will make it at 10 o'clock.

Adjourned to Wednesday, May 27th, 1931, at 10 A. M.

[fol. 93] MINUTES ON THE HEARING BEFORE JUDGE KNOX HELD ON MAY 27, 1931

[Title omitted]

Before Hon. Jno. C. Knox, D. J.

(Court-room #2, Woolworth Building)

New York, May 27th, 1931, at 10 A. M.

Present:

Irving Trust Company, Equity Receiver, by A. Christiansen, Esq.

Olcott, Holmes, Glass, Paul & Havens, Esqrs., Attorneys for the Receiver, by Joseph Glass, Esq.

Milton C. Weisman, Esq., Attorney for Creditors' Committee.

Nathan D. Stern, Esq., Attorney for Defendant.

Charles H. Tuttle, Esq., representing National Surety, American Credit Indemnity (and another Surety Company).

Joseph K. Guerin, Esq. (also representing above Surety Companies).

Baldwin, Hutchins & Todd, Esqrs., Mr. Wise, of Counsel, representing Hermann Loewenstein.

[fol. 94] O'Connell & Butler, Esqrs., representing G. Levor & Co., Inc., by Raymond O'Connell, Esq.

Isidore Vise, Esq., representing J. Greenebaum Tanning Company of Chicago.

Archibald Palmer, Esq., representing V. S. & M. W. Snyder, Inc., of Boston, Mass.

George Z. Medalie, Esq., U. S. Attorney, representing U. S. (Tax claim), by Morton Baum, Esq., Assistant U. S. Attorney.

The Court: Now, gentlemen, you may proceed.

Mr. Tuttle: I have an affidavit on the way here; I would like to read it to the Court when it arrives. Until then I have nothing further except to say that I want to correct the appearance which I gave yesterday. I am appearing here today only for the three surety companies which I named.

Mr. Vise: May it please the Court, I represent the J. Greenbaum Tanning Company, and it was through no fault of Mr. Tuttle but entirely my blame that there was that confusion. And while I am at it, if I may have about two minutes, I would like to express our attitude in the matter. Mr. Tuttle yesterday, I believe, in his statement objected to the language of the offer. Of course, to correct [fol. 95] the language in any offer or decree is not going to successfully make money for the creditors in a reorganization like this. It will take more than that. And I believe, in listing the assets of the corporation, there is one that may never appear, and that is the ability of the individual. This particular business, as I understand it, is more than a business of buying and selling of merchandise; it involves creative talent, and I believe that Morris White has a great deal of creative talent which can be utilized; and Mr. Tuttle in his argument yesterday objected to the management—the continued management of the business by the same parties. Now, I believe that there should be an amendment to the particular order and decree, providing that Morris White should consent to an injunction, if you please, so that the creditors will have the benefit of his services for a limited time. I think before anybody should come in here and criticise a proposition that is submitted—I think we are in the position of the two characters in Bruce Bairnsfather's cartoons of "The Better 'Ole"; that none of us like the hole we are in now, but before any of us criticises the proposition, let somebody find a "better 'ole."

Mr. Wise: Your Honor, I represent Hermann Loewenstein, who has a claim against this company for some $5600. I simply want to say that we concur in what Mr. Tuttle has said heretofore. It does not seem to me an examination of this offer will disclose any proper method of financing this new company. The offer to purchase or to take over the stock—common stock of 1,000 shares, makes no provision for what shall be paid for it, nor is anything said in the offer as to the method of payment for that common stock. [fol. 96] The second thing that we do not agree with at all is that Mr. Morris White is necessarily competent to manage this business. We may be completely out of step with everyone else; but a man who has run two corporations and

driven both of them into the position that these two corporations now are, it hardly seems that the creditors should be asked to come in and to throw everything they have into his hands. And the second thing is, that one of the primary assets listed on that statement as of April the 6th, is a note for $1,700,000; and in an examination of the figures I can find no record of how that came into the corporation or of any security having been taken for it. I think that is evidence of gross mismanagement in the corporation, in which it probably will be conceded that there has been mismanagement.

The Court: What would you suggest be done?

Mr. Wise: We want to liquidate this now, sir.

The Court: Do you think there would be any return whatever to the creditors, from what has been shown here, assuming the facts as disclosed on this hearing are correct?

Mr. Wise: I do not think that there will be any great amount, but certainly, taking the figures, they list there assets of $1,400,000; certainly we ought to be able to get something out of that. Now, that statement as of April 6 has been proven, I think it will be accepted now, as not being anywhere near correct; but nevertheless, there must have been something behind it.

The Court: Have you got a statement there that shows the assets?

Mr. Weisman: Absolutely (submitting to the Court).

[fol. 97] The Court: Well, this says: Manufactured stock, $508,000. That is a good deal more than you suggested yesterday as the value of the stock.

Mr. Glass: In so far as the figures given yesterday, your Honor, let me indicate how the figures were arrived at. The figures you have before you are the accountants' figures taken off as at the date of receivership. Immediately following the appointment of the Receiver, the Receiver called together the creditors, and the Creditors' Committee that was yesterday named, was appointed. That Creditors' Committee met and appointed a sub-Committee for the purpose of appraising the assets, including the inventory. On that sub-Committee was Mr. Hausman, in the cotton and rayon business, a creditor in the sum of $19,000; Mr. Quigan, in the leather business, a creditor in the sum of

$14,000; Mr. Bernheim, in the leather business, a creditor in the sum of $42,000; Mr. Rosenberg, in the ornament business, a creditor in the sum of $32,000, and Mr. Schoenfeld, in the frame business, a creditor in the sum of $30,000. These creditors are entirely merchandise creditors and are totally unsecured in so far as the defendant corporation is concerned. They are the creditors who sold the substantial part of the inventory to the defendant.

They immediately met and appraised the estate; and they appraised it in a set-up of three columns. One, a column showing the figures appearing on the accountants' balance sheet; another, a column indicating what a forced sale would bring; and a third, indicating the value of the merchandise on a continuing business basis.

That first column showed, for finished merchandise, $508,000. The liquidation sale on that showed $207,000. [fol. 98] The value of that merchandise on a going concern basis was shown at $325,000.

The unfinished merchandise would show the greatest shrinkage. For instance, leathers were listed in that accountants' inventory at $316,000. On a liquidation sale, they were cut down by these leather merchants to $75,000. On a continuing business basis they were cut down to $255,000. Similarly with frames; the frames for the bags. The accountants' figures showed $161,000. The liquidation sale showed $25,000. The value of the merchandise as a going concern, $80,000. And so on, down the line; with the net result that the total finished and unfinished of $1,249,000, shown by the accountants, was estimated to realize $357,000 on Receiver's sales in liquidation, and $717,000 on a going concern basis.

Mr. Tuttle: I would like the privilege of saying a word to the Court before I leave, if there is no objection. My position is exactly as I stated it yesterday: that the clients that I represent are opposed to this offer that has been suggested here, because there is, in these papers, nothing stated on which they can form any judgment at all, and the offer, as it stands is, in their judgment, simply—now, what I desire is an opportunity, such as we would have, in view of the fact that this is a bankruptcy, that we would have under the Bankruptcy Law, to proceed with the examination. It can be done immediately and promptly; it can develop the full facts. I do not know why we should

have to surrender blindly, claims that we might have against people, if there are such claims, because of this complete bankruptcy. I think this is a case where there should be an opportunity for creditors who are not members of the Committee, to obtain all the light possible.

[fol. 99] The Court: They can examine him, if they care to—I can take the testimony here or I can appoint a Master to take testimony——

Mr. Tuttle: I will be very glad to do that at such time as your Honor may fix. Of course, I could not do it this morning. And I would like the privilege of submitting to the Court, if I may, today or tomorrow, some affidavits which will state our position fully; I have some of them here, but I have not them all.

The Court: Well, when will you be prepared to present such examination that you may care to?

Mr. Tuttle: Any time that your Honor fixes, after tomorrow. As I have stated, I am in this criminal case and my own client is going on the stand this morning.

The Court: And he is liable to be there for three or four days, isn't he?

Mr. Tuttle: Possibly; but that does not depend upon me. I would, of course, a great deal prefer that it would be done next week, Saturday being a holiday. I do not wish to hold anything up at all.

Mr. Stern: Except that I assume it would have to be several days, and so far as this case is concerned, we are very nearly late in catching the present season in this business and——

Mr. Tuttle: The Receiver is authorized to continue the business——

Mr. Stern: The Receiver has already issued $25,000 worth of certificates and has no desire to issue any more, and we have got to get actively behind the business if we are going to accomplish what we hope to accomplish by this proposition.

Mr. Glass: May I just say in reply to the criticism, or rather, the expressed criticism of Mr. Tuttle on the moving [fol. 100] papers. I do not know of any such moving papers in connection with any New York reorganization plan that sets forth anything more than that outlined in the plan. Notices were sent out two weeks ago. Not one inquiry came from Mr. Tuttle's office to the Receiver nor

to the Receiver's counsel, seeking to elicit the facts. Now, this is a rather late date to appear and claim insufficiency in the moving papers. The moving papers generally apprise the creditors of the situation. Certainly it would be impossible for the Receiver in any complex situation such as this to present in complete detail a situation which necessarily is involved.

Mr. Tuttle: I do not believe I have to add anything to what I have said yesterday; and certainly there is no time. We have to consider, and the Court has to consider this proposition on the basis of what is set forth in the moving papers. I would like therefore to ask your Honor's permission to file my affidavits tomorrow; and if your Honor feels that you can grant my application for a hearing in this matter so far as the examination is concerned I should certainly prefer that some time next week.

Mr. Palmer: There is a question, if your Honor please, in connection with Mr. Tuttle's opposition, whether or not he actually represents creditors in this case. Mr. Tuttle said yesterday he represented three insurance companies. The insurance companies, I do not believe at this time, can possibly be creditors here in this case. As far as the clients of Mr. Tuttle are concerned, have they yet paid a dollar to anybody? I think that should be determined before Mr. Tuttle's position at all comes into existence as to what may be done in an examination which I think is entirely outside the Court's province——

[fol. 101] The Court: What is outside of the Court's province?

Mr. Palmer: Of the Court's province, to determine whether or not Mr. Tuttle can examine, until he finds out whether he represents creditors who are actually in this case——

Mr. Tuttle: I can cut that short, because one of them has already paid $14,000. Now I am afraid I must leave, your Honor.

Mr. Stern: If the Court please, I don't know whether any other creditor should be heard before I should be heard——

The Court: Is there anyone else who wishes to be heard against this plan?

Mr. O'Connell: I would like to say a word.

The Court: Who do you represent?

Mr. O'Connell: Raymond O'Connell; I represent G. Levor & Company, a creditor to the extent of about $4500 on merchandise account, in April of this year.

The Court: Before or after the receivership?

Mr. O'Connell: Immediately before, on a claim——

Mr. Stern: They are not preferred, Judge.

Mr. O'Connell: We wish to go on record as strenuously opposing this suggested reorganization. The idea appeals to me and my client as being preposterous. The only effect I can possibly see that it has is to strip out the assets, what little there are remaining, and turn them over to the very people who have brought the creditors into this situation. That is going to be the net effect of the reorganization. They are going to have full control, under their Creditors' Committee, with Mr. Morris White as President, obviously, to do with what they will. Now they can very readily do [fol. 102] this. In the first place, the creditors lose all control over any payments to be made for the costs of the receivership; which, in my mind, is not only a vicious thing, but is a dangerous thing to the creditors. That is a matter that should be passed upon by the Court. In the second place, these people could keep this concern going and draw down in its entirety all the assets of the corporation in the form of salaries, and the creditors will be 1,000 per cent. worse off than they are now. Now, there is absolutely no argument in favor—there is nothing that appeals to the creditors and there is no insurance that he is getting one five-cent piece. The effect of such an offer is merely to encourage other people to go broke, as it were, and make money by doing so; and we wish to be strenuously noted as being opposed to this plan.

Mr. Stern: May I say to your Honor in that connection that Levor & Company, as I understand it, are insured by the National Surety. In other words, when that lawsuit was tried, the National Surety's counsel represented the Levor people in the contest and trial in the Supreme Court.

Mr. O'Connell: That is not correct, sir. The counsel that represented them was independent counsel, paid for independently by G. Levor & Company; and there is no assurance one way or the other that G. Levor & Company is pro-

tected in the event that they are not paid here. The surety company has denied any responsibility.

Mr. Wise: Your Honor, there has been a good deal of doubt thrown upon the different claims asserted. There are and can be none against Hermann Loewenstein's claim. [fol. 103] He has a claim against this estate for $5600. I do not know whether it is proper at this time to set up, interpose the idea that this Creditors' Committee is not representative of the creditors; it does not represent either the majority in amount nor in number, as I understand it; and I have been at some pains to find that out. This whole reorganization is predicated upon the assumption that a man who could drive two corporations into bankruptcy within six months of each other is capable and competent to take over and continue the running of another company and to make it a going concern. They say that the only way that this business can be carried on and to make something out of it is to put Mr. Morris White at the head of it and to give him practically unlimited control. And we say that we are not in accord with any such idea. It is making them take securities which are not cumulative, in a faint hope that eventually this corporation will be worth something; and they give us 20 cents on the dollar in promissory notes which are payable six months and a year from now, and a year and a half and two years from now. There is no proper set-up before this Court, nor can I, as I see it, understand an offer of re-financing of this company—they do not come in here and say that they are going to put up any cash. They assume that the business will carry itself, or that by continuing in the business they will get cash from one hand to put it into the other; and we wish to be noted as absolutely objecting to this reorganization plan.

A Voice: May it please the Court, I represent Vincent Astor, the landlord of the premises on which this business [fol. 104] has been conducted. Mr. Astor is not a member of the Creditors' Committee, and his claim is not listed among those with the Creditors' Committee. His claim is $47,000 odd. We have known Mr. Morris White for a great many years, and I say to the Court that we have confidence in his ability to come back. He built up a business from practically, as I understand it, nothing, to a position which in this handbag business is probably second to none in this country, and he had made a great deal of money. But, as

far as the handbag business is concerned, he ran up against the depression and also he exercised bad judgment, I suppose, in trying to expand and going into the Stock Market and the real estate field. But the fact remains that he has made this business and he has a great deal of ability; I mean, he has demonstrated it. My client feels that the only hope of the creditors obtaining any substantial return is to give Mr. Morris White the chance to come back. The 20 per cent., as I understand, the stock in trade, might, under a forced sale, realize something on the order of 20 per cent. of claims; but I think that is very doubtful, because it undoubtedly, with Morris White going out of business, would probably depress the price of this raw material. The creditors are therefore gambling a problematical 20 per cent. minus of cash against the ability of this man who built up this business from nothing to a gross of something over $5,000,000, as I understand it—$7,000,000 a year; and my client is in favor of the plan; and we have arrived at that conclusion after long discussion with Mr. Morris White individually, and I personally have talked to Mr. Wolinsky, his manager, and I am convinced it is to the best interests of the creditors to accept this offer.

[fol. 105] The Court: The thing that I have in mind is as to how the new corporation is to carry on so far as capital is concerned.

Dr. Sirovich: If it pleases the Court, as a physician I have uniformly found that it is not what a man eats but it is what he digests and assimilates that contributes towards his health and strength. Every economist will advise you, your Honor, that it — not what men earn, but what they save that contributes towards their wealth. Every educator will teach you that it is not what men learn, but what they remember that contributed towards their education; and every minister of the Gospel will say to you that it is not what men preach, but what they practice in this world that counts. And as the president of the Industrial National Bank, one of the largest creditors involved in this situation, your Honor, I have come here, irrespective of who may appear on both sides, to try to bring justice to the greatest number involved in this situation. If it pleases your Honor, there are 150 creditors who are obligated, through Morris White. These 150 creditors represent five banks and 145 creditors. To the five banks there are owed,

in approximate numbers, by Morris White, Inc. the sum of $280,000; in round numbers, we will say $300,000. To the creditors themselves, the 145 others in this case, Morris White, Inc., owes in round numbers about $450,000. Therefore, to the banks and to the creditors, 300,000 and 450,000 represents $750,000. To the Government of the United States in Federal Income Taxes there is due $80,000. To the State Department on income tax there is due about $60,000. For taxes to the City of New York about $50,000. So that if it pleases your Honor, in this entire case the [fol. 106] total indebtedness that Morris White owes as of May 21 is the sum of $950,000. Of the $950,000, your Honor, 300,000 to the banks and 450,000 of creditors, there are almost 300,000 therefore that are willing to see that Morris White be given that opportunity to go on. The Government of the United States in Washington is willing to come in just as every creditor, and not as a preferred creditor, to see that justice to Morris White is done. The same with the State. If you go and put this man into bankruptcy you are ruining every man here to whom Morris White is indebted.

The Court: Well, the Government takes priority, does it not?

A Voice: Only in bankruptcy, your Honor.

Mr. Baum: I don't want to interrupt. It retains the priority but it has agreed that it be tranferred.

Dr. Sirovich: Now, if it pleases your Honor, with all this money that is due, we have the picture of a man who started in this business twenty-five years ago when the leather and pocketbook business was controlled by the foreign capitals of the world, in Germany and France; and in twenty-five years he has built up this American industry that he represents, the largest concern, not only in America, but in the world, employing between three and four thousand people, and has built up a plant in twenty-five years, never taking away a dollar from a human being, making every year at least $600,000 profit; and here last year, in this great economic depression that has subjected and forced thousands of businesses into an economic state of depression, this man, through no fault of his own, finds himself in the position, where he has made $600,000 every [fol. 107] year, in this year, through this economic depression and through the fact that people cancel-ed orders by

the thousands—millions, and through the fact that he had made investments in the bank, suit for which the distinguished gentleman here on the opposition is defending, where a fortune was lost by him in an honest endeavor to maintain business—comes before this Court, not in the sense that this gentleman has said, that he is ruining people—he is one of the finest philanthropists that I know; thousands of his dollars have gone to every conceivable charity, without regard to race, creed or color. And if it please your Honor, if this man be given an opportunity to come back and put three or four thousand people back to work, not a cent will be lost to anyone; everyone will receive their money back. And what is this atrocious system, that so much vituperation has been hurled in the face of the Court. These gentlemen will see, if the Court approves of this reorganization, as I sincerely hope you will, your Honor, this reorganization has a Board of five directors, three composed of the White personnel, one representing the banks and one representing the merchandising creditors. Mr. White, nor any man in that business can receive not a dollar compensation in any shape, manner or form unless four out of the five agree. The plans and policies must be approved by those four out of the five. And when you take into consideration, your Honor, that every industry in which this pocketbook and leather industry is involved throughout the country are today engaged with strikes with the labor unions, and here is the only man who has maintained labor conditions and wage conditions, to make [fol. 108] the home and the hearth and fireside the better for his having lived; he has given of his today that others might be the happier tomorrow; and I contend, your Honor, that if you allow him to go back, as he will, he will reflect credit upon the judgment of the Court. And for the benefit of those gentlemen who are opposing, let me say something, that I have just received ten minutes ago. This is the picture, your Honor: Morris White, Inc. has approximately 150 creditors made up of banks, five, and 145 merchandise creditors. Their total liabilities to the banks are $281,000. The total liabilities to the merchandise creditors are $441,000. The accrued rentals and real estate taxes are $47,000; Federal taxes, $80,000; New York State Franchise Tax, $57,000; accrued expenses and pay-roll, $10,000; Receiver's certificates, with interest, $25,000. Making a total of $943,000——

Mr. Wise: Your Honor, may I interrupt just one second there? I think it was stated yesterday in this Court Room——

Dr. Sirovich: If it please your Honor, I would like to proceed without any interruption.

Now, on the other side of the picture, Morris White has, as current assets on May 21, cash in the banks of $107,000; accounts and notes receivable, free, $61,000; merchandise inventories in the approximate amount of $562,000, made up of raw materials, $387,000, and finished goods, $175,000. And there is no doubt that all of those accounts will be collected, because they are A-1 accounts. Other assets as of May 21 are, investments in and dividends of subsidiary and associated companies of $2,277,000; machinery and equipment, less depreciation reserve, unlisted securities to [fol. 109] the amount of $60,000. And he has made every year, from 1922 up to the present time, almost $600,000 to $800,000 profit. And, if your Honor please, if all those men who are men who mean well and whose intentions are honest, will unite with the 80 or 90 per cent of the creditors, including the banks, who are in favor of seeing this go through—they say that the majority are always wrong, irrespective of right or wrong; but here is a case where the majority are right, and the majority seeks justice, not only for Morris White, who has never been a failure in twenty-five years, but who has made this country the greatest and the largest country in the world in the manufacture of this commodity—the Government is willing to cooperate; why shouldn't we all cooperate with this man who has done so much good and say "Go on and make the world better for your having lived."

Mr. Wise: Your Honor, I call your attention to the fact that the Government has not surrendered their preference; they are maintaining their preference, but they will extend that time. The tax is listed at $80,000; and it was stated yesterday to be over $100,000 in tax due to them.

The Court: What is the amount of your claim?

Mr. Baum: The amount I should say would come about $90,000, roughly speaking, undisputed.

Mr. Wise: The second thing is that they say that Mr. Morris White has built up, during twenty-five years, a wonderful business, without a failure; and here they are before

this Court with an enormous failure. And the principal asset they list is $1,700,000, note, unsecured——

Mr. Palmer: Who do you think it is?

Mr. Wise: That is what I want to know.

[fol. 110] Mr. Palmer: Why didn't you ask the accountant or the lawyer, and they would tell you?

Mr. Wise: Vincent Astor says he is willing to go on with this thing. Of course he is; he is the landlord; he is going to get some rent. If this thing is sold under the hammer today, he loses his tenant. Of course he will play with them. But I submit, your Honor, particularly, that we do not admit that Morris White is a mystic man that can draw this thing out of the fire. His very actions in the past three years has proved it; he has brought this company down to absolute ruin. On that theory then, they set up a statement here which shows that every single figure on the assets side has had to be changed; and today they cannot show me any $4,000,000 of assets, nor one-half of it; and they come in here and list the raw material and manufactured stock at $1,400,000, which they admit today is not worth more than $400,000. As Mr. Tuttle said yesterday, this thing should have been in a Court of Bankruptcy and not in this Court.

Mr. Weisman: May it please your Honor, I think perhaps a complete statement of what the Credtiors' Committee hoped to do and tried to do and feel that they accomplished in the presentation of this offer will clarify the situation. I say to your Honor it is regrettable that gentlemen such as are sitting on the other side of the table, although afforded a full and free opportunity to ascertain all of the facts and circumstances and figures in this case, have neglected so to do, but come in at the last moment with a lot of blatant mis-statements, inaccuracies and mere jamming of wind, your Honor. I have been in this matter for three months; [fol. 111] I have labored with this Committee; we have spent days on days—and I mean that literally—and I will take every statement that has been made here, your Honor, and show that one after the other, it is either untrue or inaccurate or has taken no regard for the facts, circumstances or the very offer that was made here and was before them. At least, if they did not want to spend the time to go to the office of the Receiver or to Mr. Stern, or to the office of Mr. Glass, the attorney for the Receiver, before coming in and making

such statements as these, they could have had the decency or integrity to read what is in the offer. Every statement that has been made here about lack of control, lack of protection, is negatived by a reading of the offer, which I will analyze for the benefit of these gentlemen, and which I want to place before the Court.

Now, in the first place, your Honor, this Committee has been attacked. It has been said: What is this Committee? Who is this Committee? The imputation was made that the Committee was formed before the Equity receivership. Now, I say to your Honor advisedly—and I sincerely trust that the stenographer is taking what I am saying; I want the record of this case to show the facts—I say to your Honor that this Committee was chosen from the floor of the creditors' meeting, at this creditor's meeting, after a poll, it was ascertained that there was present $747,000 worth of liabilities, and this meeting was called after the receivership by the Receiver himself. Now, so much for the Committee. Now this Committee, which has labored—and I will take your Honor's time to tell you how conscientiously and patiently this Committee labored; this is an important case to [fol. 112] this Committee, your Honor, and they beg of your Honor that you hear the facts. This Committee, by its personnel, represented $178,000 of merchandise claims. That is, your Honor, that this Committee was the executive of people to whom there was owed by Morris White, exclusive of the banks, $170,000. In addition to this, the banks had two men out of a committee of nine; and to the banks was owed, unsecured, $262,500. That is exclusive of the secured money, which amounts to $179,000; which security, by the way, was given as cash was given; there was no question of preference as to this security; this money was concurrently advanced as cash, and as the cash was advanced, the security was taken. Let that be plain.

Now, as to the facts in this case. Mr. Tuttle, with lack of preparation and under the strain of a great criminal case, comes into this Court, your Honor, and closes his eyes to every single fact and circumstance: "We haven't had time. We don't know. We have been kept in the dark." And he says "I represent the National Surety Company." Now, let me say this to your Honor, so that the Court may be advised with what good faith this Committee acted. After the appointment of this Committee, when it was ascertained that

a representative of the National Surety Company was in the room, although he requested not to be put on the Committee, the Committee requested him to come on, ex officio. And he sat in on every deliberation of that Committee, the National Surety Company's representative, Mr. Moak. Every fact, every figure, every thought, every deliberation was openly and fully presented to him. So now your Honor has a pic-[fol. 113] ture of this Committee. There was no secret about it. Every piece of information was open. When Mr. Greenebaum came on here from Chicago and walked into my office, he said, "Mr. Weisman, I am a creditor." I said to Mr. Vise, their attorney, "Every piece of information that I have in this office is at your disposal. Every question you want to ask me, I will answer." And I sat down with Mr. Vise for three hours—is that correct?—I went over every single fact and circumstances. He said, "If I had known that I would not have come in. We don't want bankruptcy in this case; we want a constructive job done."

(A question was asked, which was inaudible to the reporter.)

Mr. Weisman: I will answer that: Certainly not I. We have had enough of these innuendoes. The statement has been made here by Mr. Tuttle, indirectly, but bearing the same weight as if it were directly made: "What side agreements have been made in this case?" Now, by asking a question, the force of the inquiry is none the less there, just as if the direct accusation is made. If Mr. Tuttle had read it over he would have seen that this Committee labored to prevent the possibility of such a thing. And I will show your Honor that such a thing is factually and legally impossible under the plan that is set up here. So that this Committee met; there was nothing secret, nothing that was not open. I might say parenthetically, that while I was counsel to the Creditors' Committee, openly selected by them, at my request and at my invitation—and if any of the gentlemen are here, on the Creditors' Committee, they will bear me out—I begged of them, since the thought was to [fol. 114] present as water-tight and constructive a plan as possible, that they bring with them, to sit in with us, their own lawyers; and I will say to your Honor, they did. The largest creditor in this case, merchandise creditor, was R. Neumann & Company, and Mr. Charles Riegelman, his law-

yer, came in and sat with us, prepared the agreement, drafted it, examined it and did all that he could to help. One of the next largest creditors was Mr. Quigan. Mr. Quigan brought his attorney; Mr. Morris Survis, a member of the Committee, is also a lawyer.

Now, this Committee got together. There can be no doubt in this case, your Honor, that Morris White, Inc.—my friend has spoken of this tremendous failure that Morris White has made. I will tell your Honor what this Committee knows and I will tell you what is the fact with this Committee, and what is the fact with this business: That this business, less than a year ago, owed over $3,000,000 to creditors. That when the depression came, in this case, this business had $2,000,000 of orders, of which $1,500,000 worth were canceled When a store like Marshall Field, Carson, Pirie, Scott and such people give firm orders and subsequently cancel them, shall the black baby be laid at the door of Morris White, when he receives cancellations to the extent of $1,500,000, notwithstanding that? Now, that is the fact, and I regret that it must be brought out here. Morris White paid down his creditors from over three and one-half million dollars, to a sum of about $750,000. Morris White had stripped his home, taken the tapestries and pictures off the walls and poured the money into this business and paid his creditors. Mr. Palmer is helping me and calls my attention to the fact [fol. 115] that he also pawned his life insurance, which he carried to the extent of over a million dollars, and poured it into this business, to save the creditors. These things are indicative. There must be some reason why these creditors want to save this situation. Mr. Morris White, on the day of the receivership, walked out of Morris White, Inc., and they had money in the bank, without a five-dollar bill in his pocket; he didn't have his last week's salary, and he could have taken it. Now, with regard to the proposed examination in this case, your Honor; I say to your Honor there is no necessity for any. A matter of three months before this receivership went into effect, the Morris White, Inc. was operating virtually under a friendly receivership——

Mr. Palmer: Five months.

Mr. Weisman: Five months the creditors knew of this situation. This Equity receivership was forced by the recalcitrance of one creditor, who refused to play along when the rest of the creditors played along; and during

those five months, the creditors were reduced by almost $750,000; but one creditor refused to play along. During that entire time——

The Court: Is he opposing here today?

Mr. Weisman: No. During that entire time, your Honor——

The Court: What brought him around?

Mr. Weisman: He got a judgment and has a preference. We cannot alter the fact; it is regrettable.

Mr. Palmer: That has been before your Honor. That is the Lesser Brothers' claim.

Mr. Weisman: Yes: that is the Lesser Brothers' claim. [fol. 116] If it was not for that, this thing would have worked out; that was about $13,000. During those five months, your Honor, the creditors talked to Morris White and said "Morris White, not because we do not trust you, but because we have a duty and a trust to the other creditors in this case, we want a firm of accountants, chosen by ourselves, to run your books." And there, at the dictation of the creditors, one of the well known firms of this town, Klein, Hinds & Finke, were chosen. During those five months no check was drawn that was not O. K'ed by the accountants. Nothing was done that did not bear the light of inspection. Morris White voluntarily reduced his salary. So we came into this Equity receivership. It was the desire of the Committee to save this business, with no ulterior purpose; with the purpose of saving the business so that future profits might be made——

The Court: Tell me this: Do you really expect that this business will be such that before the liquidation of these notes which are to be given, earnings may accrue which will permit the payment of dividends on this preferred stock?

Mr. Weisman: I will say advisedly to your Honor, that it is the sincere belief of the Creditors' Committee, that those notes will be anticipated by at least a year, and that by December, at least one-half of them can be paid off and that the stock will be wholly redeemed. I will come to that.

I want to say further to your Honor that the banks in this case have said to me that "If, as and when this plan goes through, that if Morris White should require financing, we are ready to do it." I want to say further——

[fol. 117] The Court: On what basis?

Mr. Weisman: On the basis of an open loan. They think the company is good.

The Court: Any form of security? Or just based on——

Mr. Weisman: No; on the basis of an open credit. That this company, based on the statement that they will have, if this plan goes through, is entitled to credit. I will say further to your Honor that the Commercial Investment Trust—that is the C. I. T. referred to, in this case—and I have taken it up with them knowing the history of Morris White, knowing the business that he has done—to enter into a factoring arrangement with him, because they are absolutely assured that this business will make a colossal fortune, as it has always done in the past. So that this business, if this plan goes through, must go marching on; it is only a question of how much profit it will make.

Now, let us look at the business side of this, your Honor—and then I want to presume upon your Honor to allow me to show the legal side of this, which my friends have so patently closed their eyes to, that the creditors in this case are absolutely and entirely protected. After all, I am somewhat responsible for this agreement; the aspersions cast upon it hurt me, and they are not the fact. The Creditors' Committee, composed of men who spent time on it—they don't come around and make a speech, and in disregard of the facts. Their money was in this thing. They have done, during the past, millions of dollars of business with Morris White, and they hope to do millions of dollars of business with him in the future. But no creditor is going to give away anything. He wanted to put Morris White in [fol. 118] a position to carry on business, directed by him, under such a plan that did not deprive him, the creditor, of any present value that he had. And the creditors went over this situation; and I have put before your Honor a statement. You will notice, your Honor, that alongside of the figures given by the accountant, are figures in ink. Those are not my figures. Those are the figures that the Chairman of the Committee wrote down as the realizable value of those assets, after a full and complete analysis of the assets by the Creditors' Committee. Now, let me tell your Honor how this Creditors' Committee operates. They had nine members of the Creditors' Committee. The Creditors' Committee wanted to be fair, they wanted to be just to themselves, and they wanted to be known as just to the world; so they said "We will divide ourselves into two sub-Committees. There is not going to be any question in this

case as to these assets or how much they are worth." So thereupon the Committee divided itself into two sub-Committees, to outline what would happen. And the two sub-Committees, neither of which knew the result of the other's deliberations, came to a conclusion within $17,000 of one another. There were two Committees appointed to see what would happen in the liquidation in this thing. The Committee divided itself into two; and the two sub-Committees, neither one was to know the deliberations of the other. And when they were opened, they came within $17,000 of one another, of the assets.

Now we say this to your Honor: This matter required constructive work. It is very easy to come into this room and say "We don't like that, and this is not any good." [fol. 119] and to attempt to belittle what has been done, without offering any constructive suggestion. It is too bad that they will close their eyes to the facts and figures, when they are available. It is the fact that every creditor on the Creditors' Committee came to this conclusion, your Honor; and it is the conclusion of these eight business men on that Committee, and myself, a lawyer—certainly the eight are not all wrong; certainly the eight could not unanimously come to a decision which would have no merit or weight. They came to that conclusion, and correctly so. They came to the conclusion that in these depressed times, in this market, where, if these goods are thrown onto the market, there is not the market with which to absorb them, that this merchandise will bring insufficient even to pay the priorities.

The Court: Can you tell me what your hope is, so far as doing business immediately is concerned?

Mr. Weisman: Yes, your Honor, I can; we have gone into that. I want to say to your Honor that while these assets, if liquidated now, will not bring enough to pay the priorities, it is absolutely the belief of the Creditors' Committee and of Mr. Morris White, that if this business is rehabilitated, those assets are worth at least $700,000.

I regret that I am so lengthy, your Honor, but I want to give your Honor all the facts in addition to those, so that your Honor can judge the constructive piece of work. Here this Committee feels that we have more than a fair opportunity of salvaging much more than 100 cents on the dollar, and I will tell your Honor why. It is illuminating. These gentlemen could have found it out.

[fol. 120] Among the assets listed there is a note, which my friend has referred to, $1,700,000. The Morris White Holding Company owes to Morris White, Inc. There is not any secret about it, and there is not any mystery about it. Mr. Morris White—the White Holding Company, rather, owns real estate today, which, appraised by the foremost real estate experts in this town as recently as four weeks ago, shows an equity of $3,000,000. However, that real estate company was threatened with foreclosure of a blanket second mortgage. Thereupon the company went into bankruptcy. Whereupon the second mortgagee got together with a representative of the concern in Equity receivership, or in bankruptcy, and the following tentative plan has been worked out, whereby possibly a million dollars will be saved to these creditors; and it is this: "Gentlemen, if Mr. Morris White can save this business and go on, we will consent, or we will work out an arrangement with you whereby this real estate will be saved, instead of foreclosing our mortgage now; and arrangements will be worked out to carry us over this real estate depression, so that you can realize on your equity in this company." Which means that there will be thrown back to this Morris White, Inc. a value of a million dollars, or $1,700,000; while, if this thing goes smash into the pot today, the entire equity in that real estate must be destroyed, and everything goes up into smoke. And I want to say to your Honor, this real estate is the finest in the City of New York, but there is not a present market for it; such property as the Fifth Avenue Hotel, the Hotel White, the Whitehall Hotel, and such property, which always have made money, but at the present time they [fol. 121] are not; but they are carrying now, and if we can go on, those equities can be saved.

Now, the Committee took all of those facts into consideration; they took into consideration the fact that at the present time, if these assets are thrown on the market, if a constructive piece of work is not done, that the entire industry will be demoralized, that the prices which will be brought will not satisfy the priorities, that they haven't got a chance to get out; while, if Morris White continues, these assets are worth, as a going business, $750,000; his past history has been good; his honesty is unassailable;

he has made money; so they said to the lawyers in this case, "Now, gentlemen, you work out a proper plan whereby if we turn this business over, the creditors will be protected."

Now, there has been a lot of statements made here that the creditors have not got any protection. We have never heard of such a thing. This thing is all thrown over to the creditors—or to Morris White, as my friend Mr. Vise has said and suggested to your Honor that an injunction issue, that Morris White cannot work anywhere else. I want to say to your Honor that this is—we have met that in this very agreement; and that is indicative of the fact to what extent this Committee lived with this thing to adequately protect the creditors; because when your Honor reads the agreement, as I will analyze it to your Honor, this agreement provides as follows: The minute that Morris White steps out of that business, the creditors get control. Does that meet your injunction? Well, it should. The creditors said "We want Morris White in this business."

[fol. 122] The Court: Yes; but if he is the man that you say he is, and he does step out and goes into an opposition concern, the corporation would not be able to compete with him.

Mr. Weisman: That is what we wanted to be sure of. But I say to your Honor that Morris White is in Court, and I am sure will tell you that he will consent to the jurisdiction of the Court, if your Honor should issue such an injunction.

Mr. Stern: Why not consult his lawyer first?

Mr. Weisman: Well, I beg your pardon; but I know Morris White.

Now, your Honor, Mr. Tuttle not having had the time to read——

The Court: Tell me this; I want to ask you now: Carson, Pirie, Scott and Marshall Field and other large distributors of the product of this business have cancelled their orders, you say. What prospect is there that they will place new orders in the immediate future?

Mr. Weisman: Now, to use the vernacular, they are all rearin' to go the minute Morris White steps into the business. He has told me, and I have analyzed with him, that in the coming season he can make $200,000. He is here, and I will let him tell your Honor how his plans are—how

he is working, as soon as I get finished with the legal aspect, which I think should be cleared up in your Honor's mind; I don't want to have your Honor have any idea in this case that this Committee did something furtive or secret; that this Committee did not endeavor in every possible way to protect the interests of the creditors in this matter.

In attacking the offer Mr. Tuttle evidently did not have time to read it, and he hit upon a sentence and he said "This is a terrible thing." Well, that is not fair——

[fol. 123] The Court: Well, let us get along down to it.

Mr. Weisman: Well, now, here, your Honor, this proposed certificate of incorporation provides, as every certificate of incorporation ordinarily does, that the preferred stock have certain rights and the common stock have certain rights; and it provides in the words of the statute; and Mr. Tuttle reads and he sees: "the holders of the common capital stock shall have the sole and exclusive right to vote and consent for any purpose"; but he failed to read this to your Honor: "Except as otherwise provided by statute, and except as is expressly provided herein." Now, here is what is expressly provided herein. It says: That the preferred stockholders shall have no right to vote for directors except for the two directors that they want to elect. That gives them the right; so certainly they have the right; they have the right as long as Morris White is connected with this business, to elect two directors. As soon as he is not connected, they take over the control and they have the right to elect three directors. There are certain things that the Creditors' Committee did not want to have anyhing to do with. They did know, from past experience, there were certain things they did want to have and that they wanted to vote for. For instance, for the guaranteeing of bonds of any other company. In other words, we knew what was the trouble with this business; we knew that Morris White, like every good merchant, loaned money outside, and we wanted to know that we were going to stick to this business and that we could go on keeping the assets for this business; so we recommended that in the certificate of incorporation, the preferred stock-

[fol. 124] holders will have the right to vote upon any proposition for the guaranteeing of bonds or obligations of

any other corporation; then they shall be entitled to vote solely and only as a class and to the exclusion of any other class of stock upon any proposition for the establishing of priorities or creating further preferences among the several classes of stock. In other words, until this stock is paid out; until these creditors have realized 100 cents on the dollar, our preferred stock, as among other corporate issues, has a class lien on all of the assets of this company. We do not care about whether or not the name of this company is changed; so we said we did not want any vote upon the change of name; but if this company was going to be consolidated with any other company, the preferred stockholders were interested, so we said: "The holders of the preferred stock shall be entitled to vote upon any proposition for consolidation pursuant to Section 86 of the said law." Then we said to ourselves: Well, we don't want any more stock; and this agreement provides that the preferred stock of this company can only be issued to the creditors of the old company, so that there can be no water so far as this stock is concerned; and we put in this provision: "They shall, however" (referring to the preferred stockholders) "be entitled to vote upon any proposition for increasing or decreasing the number of shares of preferred stock"; then we went further; we said: "Maybe the majority will agree; we will make it stiffer and harder. We want every single creditor to know that his preferred stockholdings are all right"; and we said—"the statute says 'majority,'" but we went on and we said "the consent of the holders of two-thirds of the issued outstanding preferred [fol. 125] stock shall be necessary and requisite to increase the number of shares of preferred stock." Then we went on as follows: "The holders of the aforesaid preferred stock shall at all times while it is outstanding, have the sole and exclusive right, as a class, to elect two of the five directors of the New Corporation. Said right to elect shall remain at all times until the stock is redeemed." Now, then it went on: "in the event that Morris White shall fail to act as general manager and president of this company, then the preferred stock shall have the sole and absolute right as a class, to elect three directors of the corporation

and from and after such date the common stock shall have the right only to elect two directors."

At this point, your Honor, I want to show the indicative thought in the minds of the creditors as a body—never mind the few objectors; in no proposition can we get 100 per cent—that was in the minds of the creditors: We are safe and secure in this thing as long as Morris White, his ability and reputation are in it, but the minute he steps out, we want a new deal; we want then to have control. And there is in here this piece of probative evidence, which I believe should carry great weight with the Court. Then Mr. Tuttle said, "Why, the Board of Directors has the right to employ the executives of this company and fix their salaries and the common stock has three and the preferred stock has two. What protection have we?" Well, we were not blind to that. If he had read the agreement he would have seen that the agreement says this: "the Board of Directors shall have the sole and exclusive right to employ the executives of said corporation and to fix the amount of [fol. 126] salary as to all such executives and such action of said Board of Directors shall be concurred in by four of the five members of the Board in order to be a valid exercise of the powers of the Board of Directors in that regard,"; and he would have borne in mind that two of those directors must be elected, one by the preferred creditors and one by the bank creditors. And then we went further to protect the creditors in this case. It came to our minds: Suppose a director dies, and then, unless other provision is made therefor, the remaining majority directors could elect his successor for the balance of his term. We said: No, we don't want that. If any one of the Board of Directors die, we do not want the balance of the Board to elect his successor; or if he resigns; we want the stock- to elect him; and this certificate of incorporation provides that in the event of the resignation or disability of any director, the stockholders of that class who elected the director whose resignation, disability or disqualification cause such vacancy, shall elect his successor. And then we went on and put in this provision: that no dividends—now they have spoken of this common stock and they say: "What protection have we got?" Now, all Morris White has got in this case so far—and I am analyzing it sheet for sheet,

and word for word—is the right to work for his creditors. I will say openly that the creditors in this case were willing to take less. He said "No, gentlemen, I am going to pay you 100 cents." And all he has got is the right to vote that common stock—the common stock is worthless until the preferred stock is wholly paid, because this certificate of incorporation provides as follows: "No dividends however [fol. 127] shall be paid upon the common stock until all outstanding preferred stock shall have been redeemed or retired." In other words, until this preferred stock is fully redeemed or retired, the only thing that Morris White can get out of this business is such salary as the creditors will agree to give him.

Now, this agreement has been attacked as loose, no protection, nothing done for these creditors.

Then the other question came up: Suppose these profits are allowed to pile up and the creditors do not get anything. We want a vehicle for the distribution of profits. We want to see that profits will come to us. So this agreement was written in: "It shall be mandatory upon the directors"—(now mind, we have two of our own, but we were worried about the other three—they were not worried, but we, as lawyers wanted it)—"It shall be mandatory upon the directors of the New Corporation to cause an audit of the affairs and the business of the corporation to be made each year by a firm of Certified Public Accountants of its selection. In the event that any such firm of Certified Public Accountants shall report that during any fiscal year ending after July 1st, 1933, there has been any net operating profits earned by the said corporation" (the 1933 are after the payment of the notes, which are a fixed obligation) "that then and in that event, subject to the provisions of law applicable thereto," (that has always to be tied up with the law applicable) "it shall be mandatory upon the directors of the said corporation to cause the corporation to apply one-third of the said earned net operating profits of the corporation for said fiscal year to the redemption and/or retirement of the aforesaid preferred stock."

Then we said this—I hope I am not tiring your Honor, but I want your Honor to get this picture—then we said [fol. 128] this: Maybe these directors will say: "This is

not profit; and this is not profit." So the next clause goes on to say and fix what are profits.

Then we came to this question: This preferred stock was going to be handed out to the creditors. There has been a lot of talk about—today for the first time, because up to this time everything has been lovely, your Honor, everybody has been doing a constructive job—side agreements; something is going to be done in this case; whose stock is going to be redeemed first. We have this clause in the agreement: "Whenever redemption or retirement of preferred stock is referred to herein, it means pro rata redemption and/or retirement, as the case may be." So that nobody can get anything that the other fellow cannot get.

And then we come to this question: There were these notes outstanding and the thought came up: Well, whose notes are going to be paid first? True, the notes have got a fixed maturity; but what is to protect the creditors? Shall we take Bill Jones' notes and pay them out of our present profits and not pay John Smith? So we put the agreement in here that the corporation shall file a covenant and consent with this Court for the benefit of all of its creditors, that in the event that any one of the notes are redeemed before another note, that then at the option of the holder of the other note, his note becomes immediately due. In other words, we believe—the creditors believe we will be able to anticipate payment of the notes. The creditors believe that before December, half of them can be taken up; but if they are taken up, no creditor can be preferred over another creditor, because the agreement [fol. 129] specifically says that before this new corporation gets these assets, the new corporation must file in this Court a covenant and guarantee satisfactory to the Creditors' Committee to the effect that if any note is paid before any other note, if there is anything to prohibit the payment of those notes or anticipate them, then, in that event, all outstanding notes should immediately become due and payable. Then, of course, under liquidation, the preferred stock must be paid in full before the common stock gets anything.

Well, then we had this situation, your Honor. They said: This stock is going to be broadcast; going to go among various creditors. It may be said that Morris White

could get concerted action; he has an interest in the thing; he may, by getting control of a substantial portion of this preferred stock, defeat the rights of the creditors herein, because he will have unanimity of action while we won't. So we even were careful enough to set up the machinery to prevent that; and when your Honor reads the agreement, you will see that the stock itself does not go to the creditors at large, because in that way there might be some difficulty about electing those two directors; creditors may be influenced by others; creditors might not care about getting stock; the stock might be bought up. So this agreement provides that the creditors will not get the stock but that the stock will be issued to two voting trustees; that those two voting trustees, one shall be nominated by the banks and one by the merchandise creditors; that these voting trustees shall issue their voting trust certificates to the owners of the stock; that these voting trustees will for a period of ten years, unless the stock is sooner redeemed, [fol. 130] vote to elect at all times the two or three directors that may be required.

Now, I say to your Honor advisedly, that in addition to that, when this notice was sent out approximately a little over two weeks ago, the names of the committee were set forth in the notice. That was done advisedly. We thought that if any of these gentlemen had any objections, they could have gotten in touch with us. The facts have been open and at all times available.

In conclusion, I say to your Honor that the Creditors' Committee in this case, with a due regard to the existing situation, in an effort to do a constructive piece of work, as distinguished from a hodge-podge job without any regard to the facts, went over this situation and carefully analyzed every fact, figure and circumstance, and then said: We do not want to get any less than we are presently entitled to but we want to, if possible, save this situation; we want to capitalize the going worth of this business; we don't want this industry demoralized with the throwing on the market of this merchandise, which will realize nothing for us. And I want to say to your Honor—and then we wanted the acme of protection, and the protection that has been worked out for them, and criticised here, as I have shown to your Honor is not subject to that criticism; and I want to say in conclusion to your Honor that I have

not spoken to a single individual or Government agency but that when they had all the facts, figures and circumstances, did not agree that this was the best and only constructive thing that could have been done in the circumstances; and on behalf of the Creditors' Committee I respectfully urge upon the Court, in view of the facts before us, disregarding these misstatements and inaccuracies, the [fol. 131] Committee respectfully urges, in good faith, that this offer may be approved and recommended to the Receiver for its acceptance. Thank you.

Mr. Stern: May I be heard, if your Honor pleases—these gentlemen are doubling on themselves——

Mr. O'Connell: No, I am not doubling; I just want to ask three or four questions which I think are vital. Nobody is here to destroy, but we are here, as far as I personally am concerned, to see that we are amply protected.

Mr. Stern: All right; I will be glad to answer any questions.

Mr. O'Connell: Why should not the creditors be in control until they are paid? Why shouldn't they have three of the five directors?

Mr. Weisman: I will tell you why, if the Court will bear with me. These creditors—that very thing came up and was fully discussed—and these creditors said to me, and it is the concensus of their opinion, that: We have confidence in Morris White; we are "in the know," so to speak; nothing can be done here that we don't know; we don't want to run this business; we think Morris White is better qualified to run this handbag business than we are, and we want to be in a position to know what he is going to do; we want to be in a position to block anything that is wrong, but we don't want to assume the responsibility for managing this business. This business is a man sized job; we have got our own business; he has always made a success of his business. And I say to these gentlemen, this business has not been ruined by the handbag business. It is unfortunate that Morris White, with a twenty million dollar business, lost [fol. 132] the twenty million dollars in outside ventures and today is not worth anything; but this mare was a good horse; this horse can pull this situation out——

The Court: You are arguing again. Just answer the question; that is all.

Mr. Weisman: That is the reason.

Mr. O'Connell: He can still manage the business and they can stay there in control. Now, if they are in the minority, he is in control, obviously, and he can do things which they might object to, but they would have no legal power, being a minority of the Board of Directors, to stop it, within certain limits. I am just voicing my objection, for the benefit of the Court and yourself.

Now again, why should not the creditors be paid interest on their notes and cumulative dividends on their preferred stock. If this thing can be worked out so that they can be paid, they should be paid in full.

Mr. Weisman: May I answer you on that?

Mr. O'Connell: Yes.

Mr. Weisman: I will tell you the discussion of the Committee. The question of interest came up and they believed, and this entire plan is predicated upon the thought that they are going to ultimately and much more speedily than the plan set up, because that was the first requirement, to get 100 cents on the dollar; and they say, in this particular case, because we are bringing Morris White back in business, we are going to get 100 cents, where we cannot get anything today; so we don't want interest. Let me say further to you, I represent some banks in this case—that is how I became interested—and we are very keenly interested in interest, but we don't want to lose sight of the principal. They [fol. 133] thought if they could get the principal in this case, 100 per cent, they are perfectly satisfied to do that, but they should not burden the business.

Mr. O'Connell: All right; within a reasonable period of time, that is true; but there should be some protection that if payment is not made within a certain time, that these dividends shall become cumulative. Let me point out to you—I may be in error; I read it there several times, but I am not as familiar with it as you are—under the terms of this offer, as I see there, it is entirely possible, after a period of years, without any limitation as to the period of time, to redeem the preferred stock and never pay a dividend on the preferred stock. It seems to me the statement in there that it is 6 per cent preferred stock does not mean a thing. Isn't it possible, by devoting earnings to the preferred stock from time to time, to take your time, as the earnings guide you,

and pay off the preferred stock dividends? Is that possible?

Mr. Weisman: No, it is not.

Mr. O'Connell: Why?

Mr. Weisman: I will tell you why. I am responsible for that structure. This agreement I read to you before provides that one-third of the profits each year, after the redemption of the notes, must be applied in redemption of the preferred stock.

Mr. O'Connell: Not dividends; but redemption.

Mr. Weisman: Wait a minute. It further provides that before a penny can be paid out for the common stock, the preferred stock must be wholly redeemed; so that the creditors in this case—the Creditors' Committee—after all, we [fol. 134] could not suit 150 separate creditors; we tried to work out the best and what the concensus of opinion desired. The creditors then said that since under this plan, before anybody else gets a penny, we must get 100 cents on the dollar, and since that 100 cents is not here now and since it will only be developed by reason of this going worth of this business and the work which will be done in it, we are perfectly willing and we do not want to burden this business with cumulative dividends and it does not make any difference to us anyhow, because, cumulative or non-cumulative dividends mean nothing until it is declared. Now, that is the answer to that.

Mr. O'Connell: Well, let us assume that yearly earnings quite low, $150,000. One-third of that, $50,000, must be devoted to retire the preferred stock.

Mr. Weisman: That is the minimum that must be retired.

Mr. O'Connell: Yes; the minimum which must be retired is $50,000. Let us assume there are $750,000 worth of preferred stock. It is going to take fifteen years, at that rate, to retire that preferred stock.

Mr. Weisman: Not necessarily.

Mr. O'Connell: All we can hope for is a strict living up to your legal obligation. You may say: We are going to retire as fast as we can. We need our protection in that agreement.

The Court: I agree with this counsel that if this preferred stock remains open for a period beyond these notes, it ought to pay dividends.

Mr. Stern: Judge, the answer to that is, let us consider this from a business viewpoint. Now, I have remained silent; I have heard criticism, I have heard counsel for the [fol. 135] Creditors' Committee, and now I want to talk on behalf of the client.

We have here four commitments. We have got to pay 5 per cent every six months, each six months, and then we have got to retire this stock. Now, there could be no benefit to Morris White in this proposition at all until he got rid of the preferred stock. He cannot get a dollar's worth of dividend on his common, assuming that he earns it——

The Court: No but he could build up a surplus there, which would be most highly advantageous to him and put his common stock there as against the possibility. Now you have got the capital of the creditors there for years at his disposal, and at the same time he is building up a reservoir of value to his common stock.

Mr. Stern: Well, that is true; but the creditors get the benefit of it, because one-third of that reservoir that your Honor speaks of, must be accumulated and disbursed.

The Court: For retirement.

Mr. Stern: For retirement.

The Court: A man who is unfortunate enough that he must get out, and whose stock——

Mr. Stern: No, Judge, please; there is no retirement by loan; there must be a pro rata reduction. In other words, this plan provides—which has not been called to your Honor's attention—that if there is $50,000 for distribution, it must go pro rata among all the claims; and it provides the same way as to the notes: If there is any anticipation of any of those notes, it must go pro rata to all the noteholders. That has been absolutely taken care of.

Now, what the creditors did here, if the Court please, as a result of that trading back and forth—and mind you, sir, [fol. 136] I did not have Mr. Weisman to deal with, who is counsel for the Creditor's Committee, but I had three other lawyers to deal with, and it was a business proposition, and the creditors said: If we get out of this thing—and they calculate they will get out of this thing inside of three years, by all hazard—if we get out of it, that we can well afford, in view of the sacrifice that Morris White had made under the terms, to pay 100 cents on the dollar, to give him the inter-

est. And that, sir, frankly I say to you, is the result of compromise.

Now let me tell you why they are bound to get out in three years—these are actualities, sir. When I talk about the value of the inventory, we have got to guess; but here is the history from the books, as made up by certified public accountants.

In 1925 this business did a volume of $6,000,000; or, to be exact, $5,807,000, and made a profit of $400,000.

In 1926 it made sales of over $7,000,000, and made a profit of over $700,000.

In 1927 it did a business of $7,600,000, and made a profit of $556,000.

In 1928 it did a business of $8,546,000, and made a net profit of $716,000.

In 1929 it did a business of $6,890,000, and made a profit of $600,000.

So that your Honor will see that over a period of six years it has netted 10 per cent of its sales.

Now look at this set-up for a moment—

The Court: Not quite; a little under that.

Mr. Stern: Well, if you please, sir, make it eight.

Now, take this set-up a minute and follow it. In this in- [fol. 137] stance we have bank claims of $262,500; we have merchandise creditors of $442,500. My friend——

The Court: Now, tell me this, just while we are on that question of the volume of business——

Mr. Stern: Yes, sir?

The Court: What volume of business does he anticipate he can do—that is, Mr. White, anticipate he can do?

Mr. Stern: Mr. White can do anywhere——

The Court: I am speaking, under present conditions.

Mr. Stern: He can do approximately $3,000,000 worth of business, conservatively estimated, which will produce a profit, on the same basis, if you please—let us be conservative in our estimate—of a quarter of a million dollars. That is 7½ per cent; less than has ever been produced.

The Court: Can he make that percentage upon the prices at which he will have to sell his product now?

Mr. Stern: Yes; because the situation, sir, in the trade now, if he can get into business, is of great advantage to himself and to the trade, in that the trade is entirely de-

moralized; it is tied up with strikes, and Morris White, after having operated on a successful basis from a back room to an institution covering the world, over a period of twenty-five years, has never, until we got into this world-wide depression and his over-expansion in outside interests, produced anything but profit over twenty-five years.

The Court: May he not have these labor troubles that are now affecting other manufacturers?

Mr. Stern: Whether he will have them or not, we cannot tell; but we know that he is able to start into business tomorrow, if this Court——

[fol. 138] The Court: Is it a Union shop?

Mr. Stern: Yes, sir.

Mr. Weisman: He is assured that he will not have these labor troubles. I have asked him that—is that correct, Mr. White?

Mr. White: Yes. We have an independent contract with the Union, your Honor.

The Court: How much business do you think you can do in the next year, Mr. White?

Mr. White: Five million, in 1932, showing a net profit of close to 10 per cent.

The Court: I know; but take the six months; how much do you think you can do?

Mr. White: In six months, we can do $750,000, which would show a profit between 175 and 210.

The Court: Those are under present depressed conditions?

Mr. White: Under present price conditions—there are forty million women in America using bags every hour in the day, and we can sell them, your Honor, and we know how to make them.

Mr. Stern: Now, if your Honor please, here is what is going to happen: There are $700,000 worth of claims here, for 80 per cent of which, stock is going to be issued. Now, we have been talking here for hours about this proposition. There are 245 creditors in this picture, and not 145; and of those 245, which make up the total of the unsecured creditors of $862,000, including the preferred claims, you have only heard from one creditor, who has gone through a very vicious piece of litigation——

The Court: Just at this point, let me speak in connection with what you said.

Mr. Stern: Yes.

[fol. 139] The Court: I want to ask if there is anyone here who is opposed to this plan, others than those who have already spoken?

Mr. Loewenstein: I do.

Mr. Stern: Well, that is Mr. Loewenstein. His lawyer has spoken for him.

Now, if your Honor please, as far as the Loewenstein claim is concerned—and I have lived through this proposition—an action was brought shortly before this receivership and Mr. Loewenstein, for personal reasons which I won't discuss, was opposed to anything except payment in full.

The other creditor whom you have heard from is Levor & Company, who have gone through a bitter piece of litigation and recovered a judgment of about $4,500. Now, those are the only two direct creditors, sir, that have voiced any opposition to this plan, out of $862,000; and the Levor claim is less than $5,000, and the Loewenstein claim is 5600. So that you have got $10,000 worth of opposition in this whole picture. That is all you have got, aside from the clients that Mr. Tuttle represents, and as to those clients, sir, let me point out to you that on the claims that he speaks for, the surety companies, some of those men are on this Committee and some of those men are not covered in full under their policies. In other words, as written, they take the initial risk of five or $10,000; and the very surety company that he represents, that comes in here, finds itself in the position where the merchandise man, whose claim he holds, or the manufacturer whose claim he holds, is on this Committee, has made a 100 per cent investigation and subscribes to the plan.

The Court: Well, of course he has very little to lose if the surety company is behind him.

[fol. 140] Mr. Stern: No, of course I mean as to the risk, Judge, that he takes on the initial part. Now, many of these policies—and I am not familiar with the particular policies that Mr. Tuttle represents and he did not choose to tell us the terms of them, and so I rather suspect, as he suspected me, that there is something behind it—they take the risk of the first five or $10,000. A man with a claim here of 32 or $42,000 takes the first ten, and the surety company makes good over that; the reason for that being ob-

vious: that he must take the risk. Now, these very men, the Rex Novelty Company, the Artistic Company, are on this Committee. The executives of those companies, who have gone through this proposition have subscribed to this plan, and then backed out. And there is a reason for that, and if your Honor has had any experience with insurance companies, he knows the companies' position is: Face the loss and take your salvage now. The surety company here is the same as a fire insurance company; they don't want to listen to any settlement. They have incurred a loss; they know it is fixed; they want to know what they are going to get in dollars and cents today, as salvage; not what is coming out of the future. That is the reason for the outrush of opposition here now, in the hope that they will frustrate the plan, and in the hope that, in order to get rid of it, they ask, as Mr. Tuttle naively put it "What is on the side?" That is the reason for the opposition. Now, sir, I say to you that in this picture, where you have got a total of $862,000, you have got, when you put these things in groups—this is what I want to call to your attention—the banks are here 100 per cent; the Committee of Merchandise Creditors represents $180,000 out of 442; or 40 per cent. [fol. 141] The Government—the Federal Government is here with the proposition that: We are so interested in re-establishing business, in putting four thousand people back to work in this establishment, that we release the Receiver from our lien on this property and we will take our chances of turning it over to the new company and having the new company pay the taxes. And the State Government is in the same position. Now of the total amount of creditors, sir, who are represented on this Committee who passed on this thing, you have got 62 per cent on the Committee who went all over this thing and traded this thing down to the very bottom. Now I am not going to go over and burden you with this settlement; but I defy any lawyer to say, in this picture, with the possible exception of that question of interest, which was the result of business trade—because, after all, if the Court please, on a composition in bankruptcy, a different offer than this might have been made—and when I say it, it is to Mr. White's distinct advantage, that the proposition from first to last was only this: "I want to pay 100 cents on the dollar." Now, on a proposition that in liquidation, to take the creditors' own figures,

in liquidation won't bring them ten cents on the dollar, White says: "I will go to work for you. I am going to hold this common stock, which is not worth five cents apiece and it gives me no power because I am supervised at every turn—until I pay your notes and retire your stock or redeem your stock, then my stock becomes worth something." And my friend, Mr. Vise says: "Give us a contract that he will work for us." Well, if the Court wants that, he will give it; and we will give it for the simple and obvious rea- [fol. 142] son that his only hope can be to get hard to work and make the greatest amount of profit to retire this stock at the earliest possible moment, because, from that point on, his stock becomes of value and not until then.

The Court: Is your objection as to dividends modified in any way by the statement of Mr. Stern, to the effect——

Mr. O'Connell: No, sir.

The Court (continuing): —that the redemption will be prorated——

Mr. O'Connell: No, it is not, sir, because that does not take care of dividends at all. It is entirely possible that the money will be tied up for an indefinite period of time without any income on that money. I have two prime objections. One is: I do not think anything like an adequate reason was given to me why the creditors, as long as they are in there, should want control and have three out of five. The second one is that interest should be paid upon that money. There is about $800,000, this gentleman says. The interest on that is about $50,000. That would not be felt by a corporation which made the huge amounts that he has rattled off here. These creditors should not be in the position where they may be, under the terms of this agreement, tied up for ten or fifteen or twenty years and not get any income on the money in the meantime. The creditors should not have to finance this man without any income on their money through that period of time.

Mr. Stern: Well, if these creditors were in there for ten or fifteen years, this business would not have been a success; it would have failed before that and we would be worse off than we are now.

The Court: What is the objection, if the business is [fol. 143] thought to be of sufficient value to pay off these creditors within two years, of providing for a dividend for this preferred stock—cumulative dividend, after two years?

Mr. Stern: I was just going to say to your Honor, first bear in mind, if you will, please, that we have got to redeem, through 1932 and '33, these notes. I am perfectly willing to say that beginning January, 1936, if the stock is not redeemed, we will pay 6 per cent dividend.

Mr. O'Connell: Some of the gentlemen said they expect it will be done within two or three years, they hope.

Mr. Stern: Right.

Mr. O'Connell: Let them take their dividends——

Mr. Stern: When I am talking of 1936—in 1932 we have got the notes to pay; I say beginning January, 1936——

The Court: What is the aggregate amount of the notes?

Mr. Stern: The aggregate amount of these notes will be about $160,000.

The Court: Well, if the business is at all prosperous in these times, you ought to pay off the notes without any difficulty within a period of two years.

Mr. Stern: Yes, sir.

The Court: And then there ought to be an incentive provided for you to retire as quickly as you can, reasonably, with the exercise of good judgment, of the preferred stock.

Mr. Stern: There is that obligation, your Honor.

The Court: There is that obligation; but it seems to me that if you had that preferred stock bearing cumulative [fol. 144] dividends, say from the expiration of the notes, that there is a greater incentive provided for effort to pay off the stock.

Mr. Stern: Now, will your Honor, in that connection, bear this in mind: We are taking this loaded with $157,000 worth of taxes which we have got to pay off and which we have had the Government's committal on that they will take over a period of time; so that we have got to pay, in addition to those notes, which are $160,000, another $160,000 in round numbers; and all I have said to your Honor is, those notes are a firm, fixed commitment that we have got to pay in 1932 and '33. Now, if we got to 1934 and we have got two years to keep their money, 1934 and '35, and I said, beginning January, 1936, if you add to that cumulative 6 per cent dividends, you give Mr. White the incentive to retire it and you penalize him if he does not retire it. With that modification—I expect I will be criticised for consenting without consulting him—but if and because of the fact that he has stated his expectation, and these

figures justify his statement in that regard—I am willing to make the commitment in his behalf now, to give them cumulative dividends after 1936, of 6 per cent; so that we shall have no reason for holding the money.

Mr. O'Connell: If your Honor please, that is entirely unsatisfactory. They talk of taking this loaded with obligations. They are taking an awful lot of assets; don't let them forget that fact.

The Court: Yes; you are taking all the assets of the creditors and wiping them out, with the exception of 20 per cent of their claims and subjecting them to the hazards [fol. 145] of the enterprise. Now, most reorganization schemes, either by way of composition or otherwise, provide for the payment of some cash to the creditors so that they get something out of it; and where the whole thing is being taken——

Mr. Stern: That is impossible, in this situation.

The Court: Well, granting that it is, neverthless, if the business enjoys the prospects that you tell me that it does——

Mr. Stern: Yes, and in the past demonstrated.

The Court: Yes—well, it seems to me that you reasonably ought to be able to pay off, within those two years, these notes plus your tax claims, or else to secure them in some other way so that the creditors can get their money.

Mr. Stern: Yes, I agree with that, sir, but what I——

The Court: And then, if your profits for the succeeding years are not great enough to pay the dividends, in the judgment of the Board of Directors, the most that can happen is that those dividends are cumulative for the benefit of the holders of the stock, as against the days of the prosperity of the corporation.

Mr. Stern: Yes, sir.

The Court: I feel that there is a good deal of merit in what has been suggested, that certainly Mr. White, who is going to get whatever there is left——

Mr. Stern: After the retirement.

The Court: —after the retirement, should have an incentive to retire that stock and give the creditors their money at the earliest practicable time.

[fol. 146] Mr. Stern: Yes; now, I have asked the Court to accept the modification; that gives us a year of leeway.

The Court: That is five years and a half, practically.

Mr. Stern: No; we have got the notes that come through 1932 and '33.

The Court: Well, I know, but they are due beginning——

Mr. Stern: They are due beginning January, 1932.

The Court: And what is the last month?

Mr. Stern: July, 1933; two years.

The Court: And then you want to put them off two and one-half years more before there is any interest on the stock?

Mr. O'Connell: There is no interest on those notes, if the Court please.

The Court: I should think you ought to be willing at any rate to so modify your plan so that beginning at the expiration of a period of six months subsequent to the last maturity of the notes, that dividends at the rate of 6 per cent will begin to accumulate upon this stock.

Mr. Stern: Does your Honor mean beginning six months —or, July, 1933 we pay the last note, and your Honor means January, 1934?

The Court: If you are not redeeming the stock at that time, or even if you are redeeming it, that nevertheless, on such stock as is still outstanding the dividends should be cumulative.

Mr. Stern: In other words, that means a cumulative dividend of 6 per cent beginning January——

Mr. O'Connell: No; beginning July, so that it will be payable the following January.

The Court: No; I will give them six months.

[fol. 147] Mr. O'Connell: That is really another year, then?

The Court: No; it is six months. It means that your dividends are beginning to run from the first day of January, 1934.

Mr. Stern: That is right. In other words, the last note being paid in July, we devote the interest to the cumulative dividends beginning January, 1934.

Mr. O'Connell: That gives them two and one-half years use of our money in the business, your Honor—I am only speaking for my own client; I am not voicing anybody else's ideas, but I am still firmly convinced—I see no valid objection to the request that the creditors have control, three out of five, during this period.

Mr. Stern: I will tell you what the objection is, if your Honor please: You cannot kill personal endeavor. Mr. White has run a successful business for twenty-five years. The only way he is ever going to face his customers and the public is, that he is in charge of this business and that his stock is the voting stock; he has got entire supervision. Now, you have not got a man here, if the Court please, against whom a solitary word as to his honesty has been said. Now, if you take——

The Court: I agree with you to this extent: that if Mr. White will agree to devote his time and attention to the furtherance of the interests of this new corporation during the period that these notes and this preferred stock is outstanding, and to no other business, that then he perhaps should have the power of determining, as it were, the management of the business; because it is largely a one man business and one in which his personality will have to go if [fol. 148] it is what you have told me here today.

Mr. Stern: Now, as to that, if I may interrupt your Honor —as to that, I am perfectly willing to agree, except as to the definition of "no other business." That it shall not exclude his right to handle his present real estate holdings.

The Court: I think that is correct.

Mr. Stern: I am perfectly willing to agree with counsel for the creditors to deliver such an agreement on behalf of Morris White as a part of the consummation of this plan.

The Court: And that his services are unique and peculiar to this business.

Mr. Stern: Yes, sir; alleged and admitted.

The Court: Now, I am simply telling you the way the thing strikes me. Now, another thing: If this thing goes through, also I think what should be provided is this: That the fees payable, incident to the reorganization and which will have to come out of such assets as are here, shall be subject to the approval of the Court.

Mr. Stern: As to that, sir, I have no word to say. That is these gentlemen you have got to deal with.

Mr. O'Connell: I am going back to that point a little bit; I do not think that any adequate financing has been shown here——

The Court: Will you wait a minute? I have not said that I am going to do it yet; I have not said I am going to ap-

prove at all. I am simply asserting what is going to be done here on certain things that have occurred to me.

Now, I want to go back to the point that I raised some time ago, and to which reference has just been made.

[fol. 149] Mr. Stern: Yes, sir.

The Court: What are the commitments, if any, of the banks to furnish adequate financing to the new corporation, in the event of approval of the reorganization?

Mr. Stern: As to that, all I can say, sir, is, your Honor heard what Mr. Weisman said, representing his bank, and Congressman Sirovich was here; he is the President of the Industrial National. All these banks have said—there are two Jersey banks and two New York banks—I won't say all of them—but four of them have committed themselves to further financing.

The Court: Well, if the thing goes through and the reorganization is approved, can there be any assurance here that these banks will advance the funds that are necessary to carry on? The Receiver has already issued certificates to the extent of $25,000.

Mr. Stern: That is all taken care of.

The Court: I grant you that; but if you are going ahead tomorrow, figuratively speaking, you have got to have some cash in hand.

Mr. Stern: We have.

Mr. Weisman: I want to say this, your Honor. I have gone to Mr. White and I said, "Mr. White, my banks have told me to say to you that if you need money to run this business, we are prepared to make a straight loan." He said to me, "Mr. Weisman, I thank you very much, but I have taken that up with the C. I. T. and they are prepared to finance me to the fullest extent. We don't need money now."

The Court: Is there anybody representing the C. I. T. here?

(No response.)

[fol. 150] Mr. Stern: These negotiations have been going on and I have been a party to them. They are ready to enter into the picture.

Mr. Weisman: I have spoken to them and they have confirmed that arrangement to me.

Mr. Stern: There is not any doubt about that, sir, banks or no banks.

Mr. O'Connell: If your Honor please, we feel that before we would be in any position to make up our minds as to how much new financing would be needed, or just how much it would take, there should be a statement submitted to us as of today, as to what they have on hand and what they will need.

The Court: How much, Mr. White, do you think you will need in the way of cash to begin?

Mr. White: I have closed a deal ten days ago with the Commercial, Mr. Blumenstiel and Mr. Nat. Walker, the minute we start to work we will get all the money we want.

The Court: How much do you need?

Mr. White: Your Honor must get my factoring of the finished inventory, under present conditions. We must go to work immediately to fill in our finished inventory. That is about 150 or $200,000—our finished stocks were all broken up, and under the Receiver we were not in a position to operate. We don't need any money to operate at all; we have all we want; we are in business the minute you tell us to go ahead and start to work.

Mr. Glass: Your Honor, anticipating the pertinency of the present question, I took the trouble last night to work up some figures bearing on the ability of the company, as reorganized, to function——

The Court: Before you come to that, we will take a five minutes' recess.

[fol. 151] (After a five minute recess, the hearing was resumed as follows:)

Mr. Stern: If your Honor please, I have given you practically all the figures and the kernel of this situation.

The Court: Did you want to say something, Mr. Glass?

Mr. Glass: Yes, your Honor; I worked up some figures last night, bearing on the situation, realizing how important it was to see ahead for a little as to how this company could function; I found the situation, assuming that the Receiver was to at present liquidate, would be as follows: There would be cash on hand, over and above the Receiver's liabilities, including outstanding Receiver's certificates and including the obligations on the judgment of $54,000, there would be free accounts receivable of $67,000.

The Court: Those are regarded as good?

Mr. Glass: Those are regarded as good, and experience during the receivership has indicated that they are high-grade accounts.

Now, the third item, the inventory item, the basis of calculation there is the basis adopted by the Creditors' Committee upon the basis of continuing in business; that figure would be $462,500.

That would make a total asset position, without taking any cognizance of the miscellaneous frozen assets, intercorporate claims and so forth, of $583,500.

Now, this would be the liabilities position:

The administration expenses, which have been estimated at $50,000; the preferred claimants, taking the Government's claim at its maximum, plus the State claim, total [fol. 152] $158,500. During the first six months, or at the end of the first six months, 20 per cent.—or rather, the total notes, 20 per cent. of the debt, will be $160,000. So that the total liabilities that the new company would start with, preferred and non-preferred, would be $369,000, against total assets of $583,000.

Now, within the first six months these would be the requirements, as I see it:

The company would have to meet the $50,000 of administration expenses out of the current assets. Notes would mature aggregating $30,150.

Now I understand that while there has been no agreement entered into as yet, the informal commitment of the Government has been obtained that the payment that had been acceptable to the Government prior to receivership, of $750 per week, would be acceptable from the reorganized company. The State, I understand, has similarly indicated that it would take the same treatment that the Government has taken. So that that would require a weekly payment of $1150; which, in six months, would require $29,900.

Now, those total requirements within the six months, without going into the question of operating cash, would be $120,000; as against which the company would start with $54,000 cash, $67,000 receivables, or $121,000. So that it could liquidate within the first six months, assuming that these arrangements were consummated, Government and State, the first series of notes, administration expenses

and the preferred liability during that period.

Now, the company, in time, has the inventory as a basis of financing its operations. That inventory would have to be manufactured further into accounts receivable, factored and cash received.

[fol. 153] The Court: How long would it take before the inventory would begin to be converted into receivables?

Mr. White: Raw stock or finished?

The Court: How soon would you begin to sell goods?

Mr. White: The finished stock, the next ten days; and the raw goods, the middle of July.

The Court: And have you got some substantial orders now that you could fill?

Mr. White: Not a dollar. We could get business by the hour.

Mr. Stern: That is due to the fact, sir, that they have not been manufacturing and the customers have not sent in their orders.

The Court: What will be the salaries per year?

Mr. Stern: That is to be fixed by four out of the five directors of the company, sir. It has not been agreed to, but the plan contemplates that four out of the five directors, which takes in the representatives of the creditors, must agree to those salaries, whatever it is, and it has not yet been taken up.

The Court: And three of them would be Mr. White's nominees, one the bank's, and one the merchandise creditors'?

Mr. Stern: One the merchandise creditors'; but at least one of those two would have to agree before those salaries could be fixed. In other words, we cannot fix the salaries arbitrarily. They must be fixed by the representatives of the creditors.

Mr. O'Connell: Can we get an idea approximately what they will be? That is a small margin of creditors, one vote.

The Court: Have you any idea what they will be?

[fol. 154] Mr. White: It is my idea, your Honor, if business will be good, I expect they will pay me well for my work. I am going to work for them for the next two years.

Mr. Palmer: Judge Knox, one of the merchants in the room here is from Boston; he has been here for several days. He wanted to know whether or not it was not possible—he thinks the lawyers have done all the talking so far—he wants to know whether a creditor can be heard. I

present Mr. Berman. He is a creditor for $20,000. He wants to go back to Boston and say Judge Knox heard him. I think even Mr. Baker, of the National Surety Company, who is opposing—I think he will do well to listen to the gentleman from Boston.

Mr. Berman: I represent not only the amount of money; this involves the shut-down of the entire industry and we have got to get started, and if Mr. White does not get started soon, we don't get started and——

The Court: What do you supply?

Mr. Berman: Metal, sir. As far as our experience has been in matters like this, where, in bankruptcy cases or some similar cases, we never got anything out of it any other way; I don't remember any occasion. We get this talk about the assets; we very seldom get more than 5 per cent at the most, or 10 per cent. And here I know Mr. White, and I don't mind telling you, your Honor, that there is not a second White; never was, and there never will be; not only from my standpoint, but from the standpoint of the entire industry. I have been connected with it, if your Honor please, for at least twenty-seven years, and I remember what it was then and what it is now.

[fol. 155] The Court: How much did you sell him in the course of a year?

Mr. Berman: Well, we have had the good fortune of selling Mr. White as much as half a million dollars a year; we practically depend upon him; the entire industry lacks confidence to go ahead. For instance, I don't know what to make for the fall, I don't mind telling you. If Mr. White would put in pigskin, pigskin would go; if Mr. White put in white, white would go; if green, green would go—all the others are like a lot of sheep; I don't know where I am at; I don't know what to make. Now I will just show you, if your Honor please. I have some stock that I was told by people to make up. Now, here is a stock consisting of about 750 dozen, and there is not a customer for it, after telling me to make it up. And I want your Honor please to remember that it is not just the creditors alone that are involved in it; it is the very future. I don't mind telling you, if, God forbid, anything happened to Mr. White, I would be out of that business—I don't know what I would be going next—and I am not only myself, but three hundred families in our works—we are shut down; we made up that stock, but what

good is it? Ask any of these supposed-to-be leading manufacturers in the City of New York; ask them what will go? They don't know; they don't know. I make up this; this is no good. I make up this; this is no good. I made up nine samples for Mr. White this spring, and every one of them was good; and then they all go—he starts, they all start—you will have to excuse me, your Honor; I never had the good fortune to——

The Court: You are doing all right.

Mr. Berman: I am a little excited about this. I was connected some years back with the Belber Trunk & Bag Com-[fol. 156] pany, a very large institution, and we had a retail chain of stores, and we had to close them up; they were not paying; and the result is a Receiver had it—somebody appointed by the bank in Philadelphia; and the most they could realize out of it, after fiddling around with it a number of months, $100,000. I went out, and in three months—Mr. Belber is right in his office right now in 136 Madison Avenue, and you can verify this, your Honor—and I went out, knowing my goods and knowing where to sell it, and got $280,000 out of it; because I knew that this particular thing would go in this place; this particular thing would go in that place. And I myself, your Honor, am fearful of the estate, that if it is not handled by a man that understand it, that it is not worth a darn. They can only be utilized by a man that really knows what he is about, and there is no man in New York City who would deny this fact: That Mr. White is Mr. White; that he is not an accident; he didn't get that money by not knowing well; he got that money because—I am proud of the fact, your Honor, to express my opinion for the first time in front of this man, that I was one of them that knows him and understood him—what he said was right; he created that business, just where it was, because it is him; and I am fearful, if your Honor please, for any other way or procedure but to allow him to go ahead; and I can go back home and put the other boys to work, and we have got just about 5,000 dozen that is finished up to the pickle, ready to go ahead.

Mr. Stern: That is a business term, your Honor.

The Court: I understand it.

[fol. 157] Mr. Berman: Thank you, your Honor.

Mr. Baum: Mr. Cash is familiar with this matter, your Honor. Our office is the attorney of record, but I think he

can tell you more directly how the Commission arrived at the decision to make this liberal concession.

Mr. Cash: If it please the Court, I would be sorry to speak to the prejudice of any position or interest that any creditor has. I have been connected with the Commission for ten or eleven years, and now as counsel; and this matter was placed before Mr. Bernard. Of course, the Government has its priority, and we are not authorized to surrender that priority, but it is willing, and I will state on the record here, that I would be prepared, under the direction of the Head of the Bankruptcy Section of the General Counsel's Office, and really at the direction of Mr. Bernard, the Commissioner, we have prepared a writing in which we agree that our claim may be transferred from the old corporation to the new—or, rather, against the new in lieu of the old; and we are willing to let the taxpayer go along as it has gone, and pay the taxes on comfortable instalments.

Now, the Commissioner was impressed with the information that this meant the employment of a number of people. Of course, the Commissioner of Internal Revenue is not in the Department of Labor, but using the old term that you don't want to kill the goose that lays the golden egg, the Commissioner wanted to preserve the status of this taxpayer, if he could, so that he could pay future taxes. He has been a very liberal taxpayer; we made investigation there and found that over a period of years, or in recent years these taxes have been paid very liberally by this tax- [fol. 158] payer, and we want to preserve it; and like my friend from Boston, I believe the Commissioner expressed the opinion that this man is a genius in this particular work and we feel that the only way to preserve the rights of the creditors and incidentally and also to preserve the rights of the Government, is to permit this new organization and to relieve this man so that he can work out his problems, the problem of paying the Government as well as the ordinary creditors. Now, of course the Government has a fixed tax liability against this concern for the year 1928. It is our suggestion and the District Attorney's Office has it in writing, that the tax be assessed against the new corporation as the transferee of the old. In that way we reserve our priority, but we are willing to go along as we have in the past, and take instalments that will not be burdensome, or that will be comfortable to the corporation.

Mr. Baum: That agreement has been drawn up and has been submitted to the Committee, and we would like to submit at as part of the Court's decree.

Mr. Guerin: If your Honor please, on behalf of the surety companies, we just want to say that we have been pictured here as trying to stand in the way of this plan and setting out to destroy. That is not our position at all. Our position is simply two-fold. When first we came into this picture—we came into it on Friday morning—I immediately proceeded to the Clerk's Office and got out the papers and found there was nothing to show the financial position of this company; there is nothing on which to base a real conclusion as to how we are—if they will supply us with a statement as to the condition of this——

[fol. 159] The Court: Mr. Glass gave figures here a few moments ago.

Mr. Guerin: Well, can't they get that up and supply it to the opposition so that we can analyze it and determine whether or not we have a chance under such a plan. And, your Honor, there have been persistent rumors of side agreements, that have gone further now than mere rumors.

The Court: You can put anyone you want on the stand and examine them.

Mr. Guerin: That is what we want; we want the right to examine, as Mr. Tuttle suggested this morning.

The Court: You can examine now.

Mr. Guerin: Will you give Mr. Tuttle the right to examine? He wants to examine.

The Court: He is busy up at this trial.

Mr. Palmer: Why don't you examine? You are the lawyear in the case.

Mr. Guerin: I would rather have Mr. Tuttle examine. He wants to examine.

Mr. Wise: If we could have some of those figures and have an opportunity to go through those, we may be in a better position to conduct such an examination.

The Court: You can have the figures here.

Mr. Guerin: Will you fix that after Mr. Tuttle is through this afternoon?

The Court: No; I have other engagements. You can conduct the examination here and put somebody upon the stand—you can put Mr. White upon the stand.

Mr. Stern: Certainly.

The Court: And examine right now. I will hear you at two o'clock if you want it, and you can go into whether there are any outstanding arrangements with anybody that have been made.

[fol. 160] Mr. Stern: Judge Knox, I am perfectly willing to go on record, as far as I am concerned, that there has been absolutely no promise, direct or remote, of any kind to any creditor, other than on the basis that is before your Honor. And I am sure the attorneys for the Creditors' Committee, and I am sure Mr. Glass can speak for themselves.

Mr. White: We have been in receivership for the past five and one-half months; I have not been able to draw a dollar out of this business; the entire thing is out of my supervision, out of my control.

The Court: If you want, I will put it over until two o'clock.

Mr. Guerin: If your Honor please, I don't want to tie it up—in the first place, can we have any figures by two o'clock?

Mr. Glass: We have them.

The Court: Write out the figures there now and give them to him now, as to what this Committee has found, as to the going value and as to the liquidation value.

Mr. Guerin: And what is on hand now.

The Court: Yes; and what is on hand now.

Mr. Palmer: And the Irving Trust Company has got those figures.

The Court: And come back here at two o'clock and we will make some decision. If you want to put Mr. White upon the stand and examine him as to whether there has been anything here that has not been disclosed, you may do so.

Mr. O'Connell: I have no information as to any side agreements. It would be a fishing expedition, as far as I am concerned.

The Court: You are still opposed?

[fol. 161] Mr. O'Connell: I am opposed; my position is that I think the creditors should get three out of that five until they are out of there, and that I am firmly and positively convinced—this man says he is going to work for the creditors—he is working for himself.

The Court: Of course he is, and in order to make a success, he has got to work for the creditors.

Mr. Palmer: You don't want the cart to lead the horse, do you? That is what you want to do.

Mr. Wise: Suppose we concede the genius of Mr. White and the ability to take the industry and rejuvenate it. His very actions in the past have proved his inability as a financial man and——

A Voice: If it please the Court, I happen to be a member of that Committee and I have been on it just as well as the rest of the members. I would like to say this: I am a creditor to the amount of $19,000. Now, I have not the slightest worry that Mr. White won't make that $19,000 good. I am prepared to give him 50,000 more on top of that 19. Now, if I am willing to gamble, without any certainty, and with only two men on the Committee, I would like to know why the rest of these men——

The Court: What do you supply?

The Voice: We do two and one-half million dollars in that industry—silks.

The Court: That is the feature of the case about which I would have some question as to the propriety of taking out of Mr. White's hands the power of determining what shall be the policy of the new concern.

Mr. O'Connell: He could have that, sir, without running the corporation. He could be General Manager, with very fixed clauses giving him full power as to the policies and sales and all that.

[fol. 162] The Court: Well, if he has got that, why hasn't he got the power to run it in toto, so to speak? Because if he, as General Manager, engages upon a business policy that should not meet or did not meet with the approval of the directors of the concern and they immediately cramped him so that he could not carry out what he wished to do as General Manager——

Mr. O'Connell: That would be so—let us assume that to be so; then they are cramping themselves; they are the ones that own this business, and it is their own self-interest; but they should be in a position, your Honor, to make the decision as long as their money is still in the business. It is their self-interest to see that he gets every aid.

The Court: On the management proposition, is the situation such that Mr. White's three nominees can vote and control the corporation in all of its activities; or does one of the other directors have to coincide?

Mr. Stern: On all matters, sir, that would affect Mr. White personally, whereby he would get any dividends from the corporation, one of the other directors have got to concur. On the question of the general policy of the business, it was the deliberate and profound consideration of every man on that Committee, and is of every creditor but these two, that the one thing you cannot kill in Morris White—you must not kill his incentive and he must be in command of this business in order to make it a success.

Mr. Weisman: May it please the Court, the Creditors' Committee, with an absolute—without exception, have said: "We do not want to run this business. We want Morris White to control it. We have got our own business." And [fol. 163] I want to say to your Honor, on the practical aspects of the case, and I say sincerely, it would be the greatest of calamities to saddle three men outside of that business with the responsibility for this business; they have their own business. What these creditors say is: We want White to run this business, but we want to know what he is doing. If he is doing anything wrong, we want to be in a position to stop it; but we don't want to run this business." And I say, from long experience with these things—not in this Court, but where banks have been taken into the situation: We do not want to run the business. If we have to run the business, we might as well close it up. The creditors say: "We don't want to run this business." These gentlemen don't want to run it. These other creditors have got their own businesses to run. Their judgment is not as good as White's, and they have said to me, and I repeat to the Court: "We don't want to run this business. If we thought we could run the business better than White, we would wind it up and go into it ourselves. But we want to know what is going on, Mr. Weisman; put us in a position where we know what is being done. We don't want to run it."

Mr. Stern: May I have one observation, your Honor. You could not find a substantial creditor here that would come in as one of three and run that business, for this

reason, sir: They are dealing with competitors; these leather goods houses, like R. Neuman and Hausman and the rest of them are dealing with competitors of Morris White; they won't sit in and manage Morris White's business and hope to sell merchandise to competitors. They say, very frankly: "It is your business to manage; it is [fol. 164] your job, and we have confidence in your ability and sagacity. We want to know what is going on so that if anything does happen, we can immediately have our veto power there." If you put Morris White in the position where he is going to be somebody's office boy, you kill whatever genius his creditors say he has; you kill his incentive; and I would not blame Mr. White for a minute, sir, if he would say "I won't do that sort of thing at forty-two years of age."

Mr. O'Connell: If your Honor please, I don't see why these gentlemen persist in misinterpreting me. I see a clear distinction between control of a business and management of a business. You are now handing over to him the Board of Directors so that he controls three out of five, and that Board of Directors will have the sole and exclusive right to deal with the assets which are going into this new company. I don't say they should sit down and say he should make this kind of a bag or make that kind of a bag; but I do say that they should be at least in a position of control, if they think that control is necessary in any particular point.

Mr. Weisman: Well, what do you mean? I would like to understand from you, just what do you mean? Tell us.

Mr. O'Connell: I am explaining it.

Mr. Weisman: Well, say it so that we will know it. What do you mean, besides these abstractions: We want the three on the Board but we don't want to do this—now, what do you want to do? Maybe I can show you where it has been provided for, if you will tell me what you want; let us hear it.

Mr. O'Connell: As I understand it, there will be turned over to this new corporation assets of a million dollars or [fol. 165] so—the figures come too fast.

Mr. Weisman: That is too bad; there may be a lot of other things that may be coming too fast.

The Court: Stop that.

Mr. Weisman: The business is being turned over. Now, what control do you want of the business?

Mr. O'Connell: My point is this, your Honor: Assets are going to be turned over—may I ask to what extent?

Mr. Weisman: To an entire and complete extent; there is no question of that.

Mr. O'Connell: All right; a million dollars—I don't know what they are. You are giving it completely over to the gentleman who owes all this money.

Mr. Weisman: Well, that is not so.

Mr. O'Connell: You are giving it to the Board of Directors of the new corporation which he controls; is that right or not?

Mr. Weisman: That is not so.

Mr. O'Connell: Is it true that the only time when four votes are necessary of that Board of Directors is with respect to fixing executives' salaries?

Mr. Stern: No; it is more. It is anything where his personal matters come in conflict with the business. Aside from that, the gentleman loses sight of this, sir: that Morris White is devoting, at least under your Honor's say-so, three years of his life, to what? To making that common stock worth something; and they have all got to be paid out 100 cents on the dollar and 6 per cent interest, cumulative dividends, before his stock can be worth a dollar. Now, what is he going to do, with no selfish motive, [fol. 166] because there the Board is in control. The only thing he has got is his management, which all the creditors say is the big thing and the greatest asset to the concern.

Mr. Weisman: The other thing that must be borne in consideration is that these creditors must get 20 per cent, which is over and above anything that he can now get, and if they do not get that at the fixed maturity, all this control means nothing; they walk in and close up the business.

Mr. O'Connell: Your Honor, I just expressed my thought.

The Court: What is your claim; $4,000?

Mr. O'Connell: $4500—it is money; I don't think it should lessen my position here.

The Court: No; I am asking you what it is; that is all.

Mr. O'Connell: It is $4500, judgment creditor. I still have that thought, that the creditors should be in control there.

The Court: Do you want to examine anybody in connection with this agreement?

Mr. O'Connell: Not now, sir. If I had time to go into the figures——

The Court: Do you want it at two o'clock?

Mr. O'Connell: It would not do any good at that time, I don't think, your Honor.

Mr. Wise: Your Honor, I think the decree should also contain at least the approximate salaries to be paid.

Mr. Guerin: One other thing, your Honor: Are these figures to be sworn to by the Receiver?

Mr. Glass: The Receiver will swear to no figures.

Mr. Guerin: I would like to get a statement—a sworn statement fro· the Receiver.

[fol. 167] Mr. Glass: May it please your Honor, there is no basis for any suspicion of the Receiver——

Mr. Guerin: No such question is suspicion.

The Court: No; but these are the figures which this Committee, as I understand, have arrived at.

Mr. Palmer: Yes; of certified public accountants.

The Court: Those are the ones that have been set up.

Mr. Guerin: Will the accountants swear to it? Let's have them certified by somebody.

The Court: Those are the figures which they have stated that they made.

Mr. Glass: Yes, sir.

The Court: All right. Do you want to examine here at two o'clock?

Mr. Guerin: Well, I want to examine. The question is, Mr. Tuttle wants to examine; that is the situation.

The Court: Of course, I would be glad to accommodate him, but I don't know when, because I have all of my appointments here that are fixed and determined.

Mr. Guerin: Suppose I see him at the lunch hour and let you know at two o'clock just when we can go on, when is convenient—how about tomorrow afternoon?

The Court: No, I think I am filled up tomorrow afternoon, as far as that is concerned.

Mr. Guerin: Tomorrow morning, about nine-thirty?

Mr. Palmer: In the first place, if your Honor please, Mr. Tuttle can do one thing; he can ask Mr. Marcus, his own client, on whose Board Mr. Morris White was, who Mr.

Morris White is. Mr. Guerin is a very capable lawyer—[fol. 168] surely Mr. Saul Myers would not keep him as a partner if he wasn't; why is he such a blushing violet that he must get tongue-tied? Why does he need counsel all the time?

The Court: The only difficulty with that is that this matter has been pending here for some time and it is now on the return day that you come in—I want to give you any reasonable opportunity that can be given, consistent with the Court's other engagements.

Mr. Guerin: Well, let me report back to you at two o'clock as to when Mr. Tuttle will be free—he may be free before.

Mr. Weisman: May it please your Honor, there are other lawyers in this case besides Mr. Tuttle.

The Court: Now, please don't argue about that; I understand the situation.

How many people would you employ there, Mr. White, if you go back into business?

Mr. White: Immediately would be four or five hundred.

The Court: What do you think will be a reasonable sum to count as expenditure for executive work in the organization for the next year?

Mr. White: I have been working on that for the last couple of days. We are slicing our overhead, the minute we commence working, if your Honor please, close to $400,000 a year. I personally drew 150 a year, and I am slicing it to nothing.

The Court: Well, you do not mean to say that you are not going to draw anything for the next year, do you?

Mr. White: Well, it is not up to me what I will draw; it is what the Committee will decide.

The Court: I know; but you control three votes on the [fol. 169] determination of what you can draw. What I want to get at now is what you think will be a reasonable sum to set aside, as it were, for your salary and those of the other executives, over the next year.

Mr. Stern: May I interrupt, if your Honor please. The only executive would be Mr. Morris White. His brother, Abe White, who had a 25 per cent interest in the business, Mr. Morris White having 75; he was a salesman; he was on

the sales end of it. There are no other family members in the picture; all the others are employees; so that it would only be as far as Abe White and himself are concerned; and Abe White's salary has been less in the past even than he would have earned if he had charged the usual salesman's commissions.

The Court: I would like to have some general idea as to what you think it will be.

Mr. Stern: I can understand Mr. White's embarrassment, because he wants to leave that to the Creditors' Committee to say.

The Court: He ought to have some amount in view. He is not going to start there without some idea of the amount.

Mr. Stern: Well, I am perfectly frank to say to your Honor that up to this minute Mr. White has not discussed that with me as his adviser. We have left it as a matter to be——

The Court: What does the Creditors' Committee think about it?

Mr. Weisman: The matter has not at all come up.

The Court: Well, I think it is a thing that ought to be brought up as far as that is concerned, so that we can have [fol. 170] some idea of what is going to be the carrying charges of this property if it is going to be turned over here. I just don't like to buy pigs in pokes.

Mr. Stern: I would like to say to your Honor that last December I went to his bank, and the manager of that bank agreed that Mr. White's drawing should be $6300 a month; instead of drawing $6300 a month I think he drew $5,000 a month; and I think Mr. White is hopeful—that was $60,000 a year—and I think Mr. White is hopeful, in the reduction, of bringing it below that sum.

The Court: Well, if he feels that he should have $50,000 or $60,000 a year for his income for services rendered, that is——

Mr. Stern: I have just spoken to him, sir. He is willing to say now that his request will not be for a sum in excess of $5,000 a month. And that is subject to the approval of the other members of the Board, whoever they may be; but it will not exceed that sum.

A Voice: I would much prefer to leave it just to the Court: I mean, I don't like to be objecting particularly to

the man's salary; but after all, we have heard that he was going to work for the creditors, and these are times of depression; he has a great deal at stake here now. It should be much more advantageous if it was a percentage of the profits or something like that; but that is just the situation I am seeking to guard against. If that $60,000 goes out in salary, that preferred stock might be there forever.

Mr. White: My drawing was 150 a year and my expense was quite heavy. I am going to deprive myself of all that I had in life to make good my obligations. I am the one, [fol. 171] and the Committee has forced me practically to make good their obligations. The business for the last fifteen or twenty years has averaged over half a million dollars a year net, your Honor. Now, I am not selling this country short at all. We are going to have a fair fall and in 1932 I am not going to stop at five million dollars, I am not going to stop at six million dollars. With the Commercial Investment Institution in back of us, we can get all the financing we want, and I am almost sure I am not going to disappoint the creditors or disappoint the surety companies, and pay the obligations before I am a year and a half or two years older.

The Court: Do you want to come back at two o'clock, Mr. Guerin?

Mr. Guerin: Yes, sir, if you will make it two; I may be five minutes late, because Mr. Tuttle does not get down until a quarter past one.

(Recess until 2 P. M. this date.)

After Recess—2 P. M.

A Voice: If your Honor please, I have just been informed—I was engaged in another court all morning—but I have been informed that there is, perhaps an examination or some such proceeding to take place this afternoon, and Mr. Tuttle has just been informed by a man from our office—he is still engaged in the Court of General Sessions—and has requested that an application be made that the [fol. 172] examination or proceeding about to take place be adjourned upon the basis of that engagement in Court, and I am now making such an application.

The Court: Well, until when?

The Voice: Until such time as your Honor would please to set it that won't conflict with that engagement——

The Court: I will be glad to extend any reasonable courtesy to Mr. Tuttle, as far as that is concerned, but he took this engagement with that engagement over there pending.

The Voice: That is quite true, sir, but the original time set for the hearing in this proceeding was four-thirty, which was after the close of the ordinary Court day at the Court of General Sessions.

The Court: I think that someone ought to be able to go on here, as far as that is concerned, if you want an examination. This matter has been set for a couple of weeks or more and quite a considerable number of persons are here in connection with it, and while I certainly do not want to foreclose Mr. Tuttle or anyone else, my own engagements, and I take it that those of counsel, are such that it is quite inconvenient to put it over when I have the time to give to it today.

The Voice: Well, insofar as I am familiar with the facts, of course I appreciate the Court's feeling about the matter, but I don't know of any reason why there should be any haste in this matter.

The Court: Well, you have a good deal of haste in it, I should say, for the reason that if the matter is to go through, that now is the season, of which advantage should be taken, according to the statements that are made here to me.

[fol. 173] The Voice: Of course, we are not asking that the matter be put over indefinitely or anything like that. We just want——

Mr. Guerin: Your Honor, the situation is this: that any examination of Mr. White—he wanted to examine Mr. White on this entire situation, but on the other matter that I spoke about, we will sit down tonight and get out an affidavit for you.

The Court: Affidavit as to what?

Mr. Guerin: As to what we have on the so-called side agreement.

The Court: Well, what affidavit have you? Can't you state that here and can't you make inquiry now and find out whether there is any foundation in the matter?

Mr. Guerin: Well, the affidavit is that certain people have been offered the sum of 25 cents on the dollar.

The Court: Well, let us find out if that is true. If you have any information on it, examine Mr. White now and ascertain whether it is or whether it is not; if you have any proof to counteract that, well and good.

Mr. Guerin: Well, I don't want to be in the position now of examining Mr. White on it until I am more definite—the people from whom this information came—I want to pin them down on it and get their affidavits.

The Court: Who are they?

Mr. Guerin: They are supposed to be a couple of creditors in this case.

The Court: Well, let us subpœna them and get them down here and ascertain the fact. You can get them here as easily as you could get them at your office.

[fol. 174] Mr. Guerin: All right; if I can do that, fine.

Mr. Stern: May we inquire who they are?

A Voice: Your Honor, I don't think it is fair now to make any statement in open Court until the facts are absolutely sure, as I see it, and I think we should have someone under oath before making any statement to the Court.

Mr. Weisman: I must submit, your Honor, that in my humble judgment I think this is merely a cover for delay. As for myself, I am perfectly willing to submit myself to examination. There has never been a case that has been more open and above-board than this one. This last-minute claim of side agreements, I say to your Honor are utterly preposterous. If there was any question about it, I want your Honor to believe me when I say that I would be the first one to say take all the time; but to come in here with nebulous, theoretical claim that there has been side agreements made, when none of the people in the case know anything about it—I am willing to submit myself for examination and when everybody connected with the case will probably submit themselves for examination—I think it is stretching a good thing too far to ask for an adjournment on these grounds.

Mr. Guerin: We want to be perfectly fair, Mr. Weisman; we don't want to delay you or tie you up, and I don't want it even to appear that I made the statement until I have a sworn statement. Can I be fairer?

Mr. Weisman: You are not fair, because it has come to my attention that the delay that has already ensued has cost this business the sum of approximately $100,000; no [fol. 175] inconsiderable sum, when this is all seasonable merchandise that must be put in work and every day's delay is very serious; and I am not speaking for White; I am speaking for the creditors of this concern, who want this thing to realize as much as possible.

The Court: Mr. White can take the stand.

Morris White (residing at No. 600 West End Avenue, New York City), being first duly sworn, testified as follows:

Examined by the Court:

Q. Mr. White, you are the Morris White who was the head of the corporation that is now in receivership?

A. Yes, sir.

Q. And it is you who expects to manage and control the new corporation?

A. Yes, sir.

Q. If this reorganization plan be approved?

A. Yes, sir.

Q. Have you made any agreements of any kind whatsoever with any creditors of the corporation now in receivership, whereby such creditor or creditors will receive any sum or any favor other than that which is proposed to be given to all of the unsecured creditors under the plan of reorganization?

A. No, sir. I haven't got a dollar in the world to make such offers.

Q. Well, whether you have got a dollar in the world or not, have you made any promise to anyone that hereafter you will in any way, shape or form favor such a person or persons over other creditors of the same class?

A. No, sir.

Q. You have made no agreement whatsoever?

A. Or promise; to no one, sir.

[fol. 176] Q. What do you think the value of the machinery is that you now have in your place, as a going concern?

A. As a going concern?

Q. Yes.

A. A couple of hundred thousand dollars.

Q. And what, in your opinion, would be realizable upon it if it were sold at auction?

A. At top, $10,000.

Q. 10,000. And what, in your judgment, is the value of the material in process that you now have in the place?

A. You mean raw material, or merchandise in process?

Q. Merchandise in process.

A. None at all. We have not got any.

Q. Well, what about the raw material?

A. Well, the raw material will take about three years to work it all up; you can't do it in less.

Q. What do you think the value of that material is as a going concern?

A. As a going concern, close to eight or $900,000.

Mr. Stern: How much, Mr. White?

Mr. White: About $900,000.

Q. And what do you think it would be worth as material, if sold at auction?

A. I don't think there is any market today for it.

Q. What does it consist of, principally?

A. Mostly high calibre leathers; a lot of fabrics, embroidered fabrics, which we must make up in the next three or four weeks or else we will be stuck, because this year it is navy, and next year we can't sell navy fabrics. If we could get them in work, with the manufactured and finished stock we have on hand, we could get a very good break the next couple of weeks.

[fol. 177] Q. How long will it take, if this reorganization plan be approved, to turn out merchantable merchandise?

A. Twenty-four hours.

Q. And do you think there is market for it at present?

A. There is a market. The retailers are all just waiting for me to get started to give them some merchandise.

Q. Notwithstanding the present depressed state of business?

A. Yes, sir.

Q. How much do you think that you will be able to realize gross for merchandise, say in the next thirty days?

A. During the month of June?

Q. Yes.

A. Conservatively, $300,000.

Q. Of good bills receivable?

A. Yes, sir; at a profit.

Q. How much of a profit?

A. Not very much; I would have to manipulate the manufacturing; about $200,000 in goods and clean up $170,000 with merchandise we have in operation—I mean merchandise in stock—I don't think we could make 5 per cent on that, I don't think.

Q. Do you believe, as a business man having experience in this line of activity, that if this reorganization plan be approved, that you can, within the next two years, pay off these notes that it is proposed to be given to creditors?

A. I believe, your Honor, that between now and the end of the summer, I expect to give my 150 creditors and five bankers, a nice little dinner, and have a check to them in full right on the plate, on the 20 per cent of notes.

Q. When is it that you have that hope?

A. By the end of the summer of 1931.

Q. You have that much confidence in your ability to——

A. We have made it the last twenty-four years. I haven't [fol. 178] lost my millions in the handbag business—that is counsel's suggestion——

Q. Well, you have lost your money in real estate ventures and the stock market?

A. No, sir—I have lost on the stock market—but I have lost an awful lot in the Bank of U. S. As a director of the institution, I carried four or 5,000 shares and have been indirectly connected in some of the deals there, and I was cleaned. The handbag business showed enormous profits in twenty-four years, and I drew more than $150,000 a year and $50,000 expenses.

Q. It is not your expectation, I take it, to withdraw any of the funds of the new organization with which to go into outside ventures?

A. No, sir. Mr. Weisman tells me I can't do a darn thing in the new organization, outside of doing my work and cleaning up my indebtedness, and then I get back my business.

Q. Are there any of the assets of the corporation now in receivership which have not been disclosed to the Receiver?

A. You mean any patents and so forth?

Q. Any assets of any kind.

A. The firm owns a couple of patents.

Mr. Stern: No; the Judge's question is, Mr. White, whether there is anything that the firm owns that the Receiver don't know about.

Mr. White: No.

Q. Have any of the present creditors of the defendant [fol. 179] corporation received any preference of any kind?

A. You mean the creditors, your Honor?

Q. Yes.

A. No, sir.

Q. That is, you have not secured any of them, other than the bank creditors which have accounts receivable pledged with them?

A. Well, your Honor, before we went into Equity receivership we were practically in receivership five long months, controlled by the banks; so I could not withdraw a dollar out of that business——

Q. Just answer my question as to whether or not any of them have received any preference?

A. No, sir.

The Court: Is there any question that any one of the counsel for the opposition desires to ask Mr. White?

By Mr. Wise:

Q. I am informed that you have a personal indebtedness to the Morris White Corporation. I would like to know how much that is for?

A. I could not tell you.

Q. Do you know that you have an indebtedness to the Morris White Corporation?

A. Oh, yes, I personally owe the Morris White Corporation.

Q. You don't know how much it is for?

A. No.

Q. You have not any idea?

A. No, sir.

Q. Have you ever been in bankruptcy proceedings before?

A. No, sir.

Q. Has any company that you have been interested in, been in bankruptcy proceedings?

A. No, sir.

[fol. 180] Q. Have you ever been in Equity receivership proceedings before?

A. No, sir.

Q. Is there any way that you can find out what the amount of your indebtedness to the company is?

A. I think Mr. Glass will tell you.

Mr. Glass: It is listed at $137,729.68 indebtedness to the company.

Q. Do you know how that indebtedness came about?

A. Yes.

Q. What is it for?

A. What I used the money for?

Q. And how did it come about?

A. The other holdings needed some money and I took it from Morris White, Inc. and invested it in the other corporation. In other words, Morris White personally took the money from Morris White, Inc. and gave it to the Morris White Holding Company.

Q. That has been your practice for some time, to take money from one corporation and hand it to another?

A. That is right.

Q. And there is listed an asset or reputed asset of Morris White, Inc.——

A. Of a million, seven hundred thousand dollars.

Q. (Continuing:) A million, seven hundred thousand dollars due from the Morris White Holding Company.

A. Yes.

Q. When do you think that ever will be paid, if?

A. On April 19 the Morris White Holding Company has borrowed from the S. W. Straus people two million and a quarter and gave it to the Morris White, Inc. business.

[fol. 181] Mr. Stern: That is 1930?

Mr. White: 1930, April 19.

Q. Has it ever been given back?

A. No, sir. On April 19 last year, at the same time, Morris White, Inc. had obligations close to three and one-half million dollars and we got it down to this low figure.

Q. Well, what was the procedure that you took—what was your customary procedure in diverting or taking funds from Morris White, Inc. and putting them into the Morris

White Holding Corporation? Did you ever take any security for this transfer of funds?

A. No security. Morris White, Inc. and the Morris White Holding Company are the same institution—I control 100 per cent of the same stock.

Q. They are the same institution?

A. I mean, it is the same organization; it is Morris White.

Q. I don't quite understand——

A. The Morris White Holding Company is Morris White, and Morris White, Inc. is Morris White.

Q. You mean you owned 100 per cent of the stock in both corporations?

A. That is right.

Q. (Question repeated.)

A. Not of Morris White, Inc. 25 per cent of that stock——

Q. How much stock do you hold in Morris White, Inc.?

A. 75 per cent.

Q. Who holds the other 25?

A. My brother, Abe White.

Mr. Wise: Your Honor, I join in the application of Mr. Guerin for a further adjournment pending a sufficient [fol. 182] study of the figures to be able to intelligently examine the witness.

The Court: Do you want to ask him anything about the assets that are—the physical assets?

Mr. Guerin: Your Honor, we do want to examine Mr. White about all these things; but the figures which were to be supplied to us at noontime, nobody will certify to them.

The Court: Why weren't you here, as far as that is concerned——

Mr. Guerin: We only came into it Friday.

The Court: I know; but why weren't you in it before that?

Mr. Guerin: Where have we been able to get the information that we need?

The Court: No one has asked for it, as I understand it.

Mr. Guerin: It is mandatory that there be filed either a Receiver's report or an accountant's report, for the benefit of the creditors. Is it incumbent upon us to go to the Receiver or go to the Creditors' Committee?

The Court: If you want any information in connection with it, application can be made for it; but this was a hearing upon the propriety of this plan.

Mr. Guerin: May I explain to your Honor why I am not prepared——

The Court: Even so, it seems to me, Mr. Guerin, that there is a great deal to lose here, so far as the creditors [fol. 183] are concerned, in delay.

Mr. Guerin: One day won't ruin it for them.

The Court: I know; but I have got appointments just as well as you and Mr. Tuttle.

Mr. Guerin: I realize that, sir.

The Court: I have got an appointment tomorrow morning which means to me quite as much as you or Mr. Tuttle, as far as that is concerned; and the convenience of the Court has to be considered too.

Mr. Stern: May I say, your Honor, that Mr. Moakes, representing the National Surety Company, who sat in on every one of these conferences concerning this matter, had before him the full accountant's report; and when this matter was finally submitted, Mr. Moakes' statement to the full Committee was: Gentlemen, I want you to understand that I cannot make any committment, but I will recommend such adjustment to my company.

The Court: Is he here?

Mr. Stern: Yes.

The Court: Is that correct, Mr. Moakes?

Mr. Moakes: Your Honor, I was not on the Committee, and when, at the last meeting, Mr. Schoenfield, one of our policy holders who had been on that Committee—it is true I attended every meeting—the first Committee passed upon the results of the offers submitted and were unanimous on [fol. 184] their report. As I told them, I could not bind my company in any way; that I would submit the entire report to my company; and I have submitted reports from previous meetings, where they discussed other methods of reorganization and other methods of stock issue; and that is about all I can say.

Mr. Stern: Mr. Moakes, isn't it a fact that you had the full accountant's report of Kline, Hinds & Finke, a photostatic copy of the full report, comprising many many pages?

Mr. Moakes: That is right.

Mr. Guerin: If your Honor please, is there any reason why at this time we cannot get some certified statement as to what the assets are? Nobody will certify to these figures.

Mr. Glass: Your Honor, I will ask exactly what the gentleman wishes? In what form of certification? I would like to satisfy him as far as possible. On April 6, the Receiver obtained from the accountants who had theretofore been acting on behalf of the creditors, Kline, Hinds & Finke, figures as of that date. Now, the figures, insofar as cash and present accounts receivable are concerned, in the hands of the Receiver, the Receiver will certify, swear to on oath or do anything else to satisfy this gentleman as to the accuracy of those figures. The Receiver can do nothing more with respect to inventory than to express an [fol. 185] opinion as to what that inventory may be worth. In arriving at such opinion it must necessarly go to people experienced in the business. It feels that in relying on the expression of the creditors, unsecured creditors who have expressed their opinion in a situation in which they are vitally interested, that that is a sound basis of reliance. Now, of course the Receiver is not going to swear to values. It will state what it has, insofar as that is requested.

The Court: Has anyone from your clients gone up and looked over these assets themselves?

Mr. Guerin: No, sir, not that I know of—have they?

A Voice: If the Court please, Mr. Schoenfield was on the Committee—merchandise sub-Committee that did the actual appraising.

The Court: Well, do you think he is competent to appraise?

The Voice: Well, he is a merchandise man and manufactures frames. Other than that, I could not say.

Mr. Guerin: This thing, your Honor, can be expedited I think to a great extent if all of the members of the opposition are given a certified set of figures—we don't care who certifies them, whether it is their accountant or whether it is the Receiver, but we must have that.

Mr. Glass: Would the gentleman kindly state what figures he wants certified?

[fol. 186] Mr. Guerin: What figures we want certified? We want the position of Morris White, Inc. as of today, as to liabilities and assets; that is all.

Mr. Glass: The Receiver will be glad to give a certificate as to what assets in the way of an inventory, it has come into possession of. That is the most the Receiver can do. The Receiver accounts for receipts and disbursements.

The Court: As to what the valuation is, is a matter of opinion and appraisal.

Mr. Glass: That is correct, sir. And during the noon hour I went over in detail with the attorneys for the opposition all those figures, so far as I could, and answered every question that was asked.

Mr. Guerin: Does the Receiver, or you, Mr. Glass—do you know how many bags are on hand, how many frames are on hand, how much merchandise in process of manufacture is on hand?

Mr. Glass: It is a matter of simple count.

The Court: Can you tell, Mr. White?

Mr. Guerin: If you can tell, why can't somebody get up a statement and submit it to us?

The Court: Can you tell what it is?

Mr. Stern: If the Court please, this copy of that report of the Committee on Merchandise Inventory, which was signed by five members of that Committee, was submitted to Mr. Moakes with the rest of the Committee's reports, [fol. 187] and has always been in his possession, and that your Honor has heard much about in the course of this discussion. It stated the different classes of merchandise that went into the inventory and it stated in the first column the valuation as taken by the accountants from the books. It stated in the second column what it would realize, in their opinion, in the open market, at Receiver's sale. And it stated in the third column what the value of the merchandise as a going concern was. And the figures on the books showed $1,249,490; that on Receiver's sale they would realize $357,000; and that as a going concern it would realize $717,000. That is the Committee's report of five merchandise men engaged in various lines; there was a leather man, a frame man, and an ornament man on it. Most of this merchandise was sold by these committeemen to Morris White, Inc.; and that is what has happened.

Now, since that event, since this appraisal was made, the actual liquidation of the finished merchandise by the Receiver has realized substantially less than even this Committee fixed as its valuation. That has been due to the

change in the market. There is a difference of approximately $350,000 between the valuation at a Receivership sale and the valuation as a going concern. It is that $350,000 that is one of the elements that prompted this entire Committee to recommend this readjustment, so that this concern could pick up that difference and turn it over to the [fol. 188] creditors.

Mr. White: Outside of the plant, your Honor, which is worth a couple of hundred thousand dollars, of which the Committee didn't take the inventory; the appraisers considered, if it is in operation, can't be duplicated for less than a quarter of a million dollars.

The Court: If it were sold, it would be junk, I suppose?

Mr. White: Yes, sir.

Mr. Glass: It may be pertinent to say, your Honor, that there were some prospective purchasers sufficiently interested to call upon the Receiver and examine the stock with a view of making a bid here for the assets. So far as I know, no bid has crystallized.

Mr. Palmer: It may be pertinent also that Mr. Guerin tell you this: that at lunch hour we went to Hahn's Restaurant and saw Mr. Tuttle, and he spoke to Mr. Tuttle and at the same time, he spoke to Mr. Singer, of the Bank of U. S., with which bank Mr. White was connected; and there was no secret about what Mr. Singer said about the worthwhileness of this man and that the only way that the creditors could possibly succeed was to put Mr. White back in harness—I was under the impression, and I am surprised that my impression was in error, because Mr. Guerin is a very broad-minded man—that Mr. Guerin would come back here and say to the Court: "From what I have heard of this situation, [fol. 189] here is one situation where lawyers' judgment should step to one side and merchants' judgment and the world's judgment should be taken into consideration."

Mr. Guerin: Your Honor, the only way I know of getting rid of this—will your Honor direct the Receiver to file a report?

The Court: Well, this report that he has got here, so far as that is concerned, is part of the proceeding.

Mr. Glass: It is part of the record now.

Mr. Guerin: Where is it on the record now, Mr. Glass?

Mr. Glass: I thought I read the figures into the record this morning; and during the noon recess I took the trouble

to go over—I read the figures for all of the attorneys on the opposition that cared to inquire.

The Court: What is the sum of the creditors' liabilities that you represent?

Mr. Guerin: $135,000.

Mr. Stern: How? We would like to know about that.

Mr. Guerin: The National Surety Company represents $60,000.

Mr. Palmer: What are the names of the companies? Let's hear the names.

Mr. Guerin: London Guarantee, representing approximately 24,000; the American Credit Indemnity, representing another—about another 27,000. That is the total liabilities.

[fol. 190] Mr. Stern: May I ask your Honor, that he state the names of the creditors that——

The Court: Yes, I think so.

Mr. Stern: Will you state on the record, pursuant to the direction of the Court, the names of them?

Mr. Guerin: Those are all creditors who have filed claims with the surety companies for their indebtedness against Morris White, Inc.

The Court: List them here. Let us see what they are.

Mr. Guerin: Artistic Wire Forming Company, Inc., for $48,049.54——

Mr. Palmer: What is the amount of your policy?

Mr. Guerin: That is the amount of the claim filed. L. Gewelbe & Company, Inc., $6,796.07. G. Levor Company, $4,538.86. They are the claims filed with the National Surety Company. The following claims are filed with the American Credit Indemnity Company: Davis Leather Company, Ltd., $7,445.56. Davis Leather Company, Inc., $2,685.54. Fred. Rueping Leather Company, $7,076.94. John H. Elliott Leather Company, $3,079.32. Moritz Eichner, $1,219.73. Hookless Fastener Company, $5,833.08. The following claims are those of the London Guarantee & Accident Company: Claim held directly by the company by assignment: Rex Novelty Works, $19,329.42. Alma Leather Company, $4,304.93. And the Hunt Rankin Leather Company, $1,118.58.

Mr. Palmer: Your Honor pardons me: Mr. Baker is in [fol. 191] the room and Mr. Guerin is in the room, and Mr.

Guerin knows less about it than Mr. Baker does. In these policies the bonding company limits the amount of insurance they give.

The Court: What is your face liability on these claims?

Mr. Palmer: If you deduct everything, what is your case liability?

Mr. Guerin: I am not prepared to say.

Mr. Palmer: The question is, how much you pay even if you get licked.

The Court: Haven't you some definite amount?

Mr. Guerin: No, we have not.

The Court: Do you mean there is no limit of liability on these various policies?

Mr. Guerin: We are in no position now to say what the limit is.

The Court: Why, don't they write for a top amount?

Mr. Guerin: They write for a top amount sometimes; not always.

The Court: What did you do in this case?

Mr. Guerin: I never had these policies; that is why I am not prepared to say.

The Court: Does not the company have here a statement as to what its top liability is?

Mr. Guerin: No, sir, no one of the three, and I have requested it.

Mr. Palmer: Well, Mr. Baker is here. He can tell you.

Mr. Guerin: He cannot. I have requested it for two days. They are working on that for me.

The Court: It does not seem to me that should take much time.

[fol. 192] Mr. Guerin: It is only a question of detail, Judge.

Mr. Stern: May I say to your Honor that the attorney who was here this morning stated in answer to my inquiry, so far as G. Levor & Company is concerned, he replied by saying that the National Surety had denied any liability. That is the situation.

The Court: Have you paid any of these claims?

Mr. Guerin: The only claim paid is that $19,000 claim.

Mr. Palmer: You didn't pay a cent. The National paid it.

Mr. Guerin: I represent all of them.

Mr. Glass: If your Honor please, it is pertinent also to direct your attention to the fact that of all of the creditors enumerated, all but two are indicated on the Receiver's records as having attended the First Meeting of Creditors held pursuant to call of the Receiver, at which detailed figures were furnished. The only two that were mentioned that were not noted as attending were the Alma Leather Company and the Hunt Rankin Leather Company.

Mr. Stern: May I say to your Honor this: The Rex Novelty Company is the one claim that they say has been filed and paid. That is held by the London Company; they paid $19,329. The Rex Novelty Company is a creditor of Morris White, Inc. to the tune of $43,882. So that clearly you find a claim there where this creditor is liable and loses $13,000; and the Rex Novelty Company, Mr. George Rosenberg, the [fol. 193] executive head of that, was a member of this Committee and advocated affirmatively the acceptance of this reorganization. So in spite of the fact that this company has paid a $19,000 loss, Mr. Rosenberg, with $14,000, is still in favor of the proposition.

Mr. Guerin: Your Honor, I come back to the same question; all this argument may be unnecessary——

A Voice: Your Honor, I am one of the creditors for $38,000, and I honestly believe—I never attended any meetings, but I know the concern, and I know just the way this thing is coming around, that unless the creditors work with Mr. Morris White, the creditors would not get a nickel; and I speak as a creditor—I am not protected, I am not insured—let Morris White reorganize his business and get back again and make good so that we will realize some money on it at some future date.

The Court: My view, stating it very shortly, is this:

That if the estimate of value which has been placed upon the assets of the defendant corporation is anywheres near correct, it means, if this concern goes into liquidation, that the general creditors will get little or nothing as a result, due to the fact that machinery, such as I imagine is contained in that place, would bring only junk prices, and that the silks and leather that might be devoted to the manufacture of ladies' hand bags, would be little more than remnants and that it would be bought at a highly depreciated value by whomsoever might wish to enter this busi-

ness; and that the priority claims, such as the Federal Gov-
[fol. 194] ernment's taxes, and the State Government taxes, would take practically all that might be realized from such a sale. The experience that I have had in seeing businesses such as this liquidated has been of a character as to lead me to believe that not much is to be hoped for from that standpoint; and that in addition to the small sum of money that would probably be derived from such a sale, there would have to be deducted the expenses of administration; the auction sale of the assets would be an expensive matter, in the way of lotting, I should think; and that if liquidation takes place I should be surprised if creditors would realize more than between 5 or 10 per cent, at the utmost.

I agree that the proposed reorganization is more or less of an attempt by Mr. White to lift himself by his bootstraps, in that there is here no capital with which to finance the new concern, save such as he thinks may be received on his business record from others who are favorably disposed toward him. All of us know, unfortunately too well, the present condition of business. Mr. White is hopeful; whether he is overenthusiastic or not, I do not know; but certain it is, I think, that quite as much is to be anticipated from such effort as he might make to rehabilitate himself, as is to be had from liquidation. I know of no fact in the case, at least none has been brought to my attention, of any suggestion of wrong doing on the part of Mr. White in the management of this business, save and except the freedom that he exercised in taking assets of this corporation and devoting them to his other business ventures. Of course, on any reorganization, that should not and must not be done. He apparently, from those who know him best, en-
[fol. 195] joys a good reputation in the business community as a man of skill and ability in this particular line of business. He agrees here, as I understand, with such modification as was made this morning, that he will devote himself to this business for the next three years and will engage in no other business save such as he is now committed to in his real estate ventures, and he will enter into no opposition business to this pocketbook work; and so, if he justly bears the reputation for ability and skill that has been given to him here this morning, you will have his services.

The sum of money which he will receive for his services, as announced this morning, seems, in my opinion, to be quite large. It may be that that sum should be scaled somewhat until the concern, if it is to be reorganized, finds what it can do under present market conditions. If he can "deliver the goods", to use the vernacular, he should, of course, be well paid for his services; and it would be most gratifying, I am sure to everyone, if, at the end of the Summer he could carry out his expressed hope of giving his creditors a check for the 20 per cent. I trust that he may be able to do so. But whether he is or not, it seems to me that perhaps the creditors, over a time, stand a better show of getting their money than they do at the present time if the property be liquidated. If it should be liquidated, no distribution could be had for several months at any rate; and if his hopes are at all well founded, the creditors will certainly be in a better position at the same relative time by going ahead than they will by stopping now.

I have decided, in view of all the circumstances, to approve this reorganization, subject to the suggested changes [fol. 196] that I made this morning in connection with it; and you may present an order along those lines, so far as the interest is concerned, so far as the preference on the preferred stock is concerned, at the expiration of 1933; January 1st, 1934.

Mr. Guerin: May I get notice, Judge?

The Court: Yes; serve a copy; and get it up as soon as possible, on one day's notice. And administration expenses will be subject to approval by the Court. And I hope that the thing can go through and that it will work out all right.

Mr. Stern: May I suggest one modification if the Court please, or perhaps two. There are a large number of claims here which will eat up the sum of $3,200, and they are in varying small amounts. I would like to suggest to your Honor that we be permitted to dispose of those claims, where any one claim does not exceed $100, upon a basis other than that contemplated in the reorganization plan.

The Court: How much do they aggregate?

Mr. Stern: I am proposing to his Honor this modification: That the corporation be permitted to make disposition outside of the offer made, of any claim that does not

exceed $100. The total amount involved in the disposition of those claims (and that will take care of 50 or 100 claims), $3,200.

Mr. Glass: There are 193 creditors that will be eliminated by that.

The Court: 193? Very well.

Mr. Stern: May I ask, too, if your Honor please—this offer provides for its acceptance within five days of its completion. We may have some difficulty with the State [fol. 197] Government in getting the papers. May I ask that it be extended to the 15th, so that we are not in default?

The Court: Of course, this is all conditioned upon getting these taxes out of the road.

Mr. Stern: Yes, sir; but I don't want to be in default here by reason of some delay we may have with the officials.

Mr. Glass: Now, if your Honor please, one other motion that comes on today, and that is the application to make the receivership permanent. That was also adjourned to today. That was adjourned to the same date upon the theory that the Court's determination of the motion just disposed of would bear upon that proposition.

The Court: What do you want me to do; to continue that for another week?

Mr. Glass: I would suggest to your Honor that that be continued for another week. In the meantime it may be——

The Court (interposing): I think I will put it over for another week—as far as that is concerned, it may be necessary for the permanent receiver—I will make it permanent now, as far as that is concerned. That is the best thing to do.

Now gentlemen, one of the moving factors in leading me to make this decision is Mr. White's statement that he can get busy and get material into production at a very early time; and I think that you had better get on the train and go to Albany and get that matter straightened out immediately.

Mr. Stern: It is in process already, sir.

The Court (continuing): So as to get them through here and let us see some real money coming into this business as quickly as possible.

I will grant each one of the opponents here an exception to my ruling.

[fol. 198]

Morris White, Inc.

Statement of Assets and Liabilities as at April 6th, 1931

Assets

Current Assets:			
Cash		$5,614.60	*5,000*
Accounts and notes receivable, less reserve for uncollectible accounts of $17,363.00 ($251,409.42 pledged as collateral on bank loans, see contra.)		301,852.12	*30,000*
Debit Balances Accounts Payable		4.12	
Claims receivable, less reserve of $35,560.00		.....	
Merchandise inventories, based on January 31, 1931 physical inventory and adjusted to April 6, 1931 by subsequent purchases and estimated cost of sales			
Manufactured Stock	(a) $508,020.81		
In Process	(a) 12,600.00		
Raw materials	(b) 720,587.28		
		1,241,208.09	*357,000*
Listed Securities—Schedule I		4,061.41	*5,000*
Total Current Assets		$1,552,740.34	
Other Assets:			
Listed securities—(pledged as collateral for notes payable of $21,568.82, see contra) Schedule I		5,500.00	
Unlisted securities—at cost—Schedule I		11,000.00	*5,000*
Loans receivable—Lysmore Holding Corp		1,850.00	
Due from officers and employees—Schedule II		156,520.53	
Thrift account—Bank of United States		300.00	
Machinery, equipment, etc.—less depreciation reserve of $48,797.15		74,265.01	*5,000*
Ridgewood, N. J., property, less mortgage of $7,006.18		5,493.82	
Investments in and advances to subsidiary and associated companies—Schedule III		2,277,714.89	
Deferred Charges—Schedule IV		30,866.45	
Total Assets		$4,116,251.04	

NOTE.—Figures in italics were in ink on original copy.

[fol. 199]

Liabilities and Capital

Current Liabilities:			
Accounts payable—for merchandise	Schedule V	$288,828.66	
Acceptances payable—for merchandise	Schedule V	108,216.46	
			$397,045.12
Accounts payable—for expense—Schedule VI			19,463.55
Sundry			
Notes payable—banks—unsecured—Schedule VII			262,500.00
Notes payable—banks—secured by assigned accounts receivable of $251,409.42 (Schedule VII)			179,116.81 (*1*)
Credit Balances on Accounts Receivable			2,155.64
Federal Income taxes			80,624.36
New York State Franchise tax			57,697.69
Due to employees			3,976.96
Accrued payroll			16,388.04
Accrued expenses			31,463.31
Total Current Liabilities			$1,050,431.48

	(1)	*179,116.81*
		871,314.67
Notes payable (secured by collateral, see contra)		21,568.82
Total Liabilities		$1,072,000.30
Capital:		
Capital stock authorized and issued 20,000 shares at $100 par	$2,000,000.00	
Surplus, April 6, 1931	1,044,250.74	
		3,044,250.74
		$4,116,251.04

(a) Accelerated liquidation value of $339,600, estimated by Mr. Morris White.
(b) Value in liquidation depends upon manufacture into finished goods.

NOTE.—Figures in italics were in ink on original copy.

[fol. 200] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF CHARLES H. TUTTLE IN OPPOSITION; SWORN TO MAY 27, 1931; SUBMITTED AND FILED MAY 28, 1931

The appellees reserve the right, by agreement of all parties, to object on the argument of the appeal that the affidavit of Charles H. Tuttle was submitted and filed after the decision was rendered by Judge Knox.

STATE OF NEW YORK,
County of New York, ss:

Charles H. Tuttle, being duly sworn, deposes and says:

I am appearing on behalf of the following parties in the above entitled proceeding to oppose on their behalf the acceptance and approval by this Court of the offer made by Lily White, dated April 29th, 1931, and submitted to Irving Trust Company as Receiver herein.

1. National Surety Company, insurer of the following accounts with said Morris White, Inc.:
Artistic Wire Forming Company, Incorporated.
L. Gewelbe & Company, Incorporated.
G. Levor Company, Incorporated.

[fol. 201] From information received from the representatives of the National Surety Company your deponent shows to this Court as follows:

The National Surety Company has issued to each of the foregoing policies of credit insurance. Claims have been filed with the National Surety Company by said policy holders in the sums of:

Artistic Wire Forming Company, Incorporated	$48,049.54
L. Gewelbe & Company, Incorporated	6,796.07
G. Levor Company	4,538.86

The claim of said G. Levor Company, Incorporated, is based upon a judgment entered in its behalf against Morris White, Inc.

2. American Credit Indemnity Company, insurer of the following accounts with said Morris White, Inc.:

Davis Leather Co. Ltd.
Davis Leather Co. Inc.
Fred Reuping Leather Co.
John H. Elliott Leather Co.
Moritz Eichner.
Hookless Fastener Co.

From information received from representatives of the American Credit Indemnity Company your deponent shows to this Court as follows:

[fol. 202] American Credit Company has issued to each of the foregoing, policies of credit insurance. Claims have been filed with the American Credit Indemnity Company by said policy holders in the sums of:

Davis Leather Co. Ltd.	$7,445.56
Davis Leather Co. Inc.	2,685.54
Fred Reuping Leather Co.	7,076.94
John H. Elliott Leather Co.	3,079.32
Moritz Eichner	1,219.73
Hookless Fastener Co.	5,833.08

3. London Guaranty & Accident Company, Ltd., insurer of the following accounts:

Rex Novelty Works.
Alma Leather Company.
Hunt Rankin Leather Company.

From information received from representatives of the London Guaranty & Accident Company, Ltd., your deponent shows to this Court as follows:

London Guaranty & Accident Company, Ltd., has issued to each of the foregoing, policies of credit insurance. Claims have been filed with the London Guaranty & Accident Company, Ltd. by said policy holders in the sums of:

[fol. 203] Alma Leather Company	$4,304.93
Hunt Rankin Leather Company	1,118.58

The claim of the Rex Novelty Works in the sum of $19,329.42 has been assigned to said London Guaranty & Accident Company, Ltd.

Annexed hereto is the affidavit of T. M. Garrison, Assistant Secretary of the National Surety Company, which sets forth the grounds upon which the foregoing parties rest their opposition. In addition, deponent respectfully submits that the moving papers and the statements as to the financial condition of Morris White, Inc., and as to this action made upon the argument upon the return of the order to show cause, show that this case is not one justifying an equity receivership at all; and that the court has no jurisdiction to proceed in equity.

Wherefore deponent prays that said offer made by Lily White, dated April 29th, 1931, and submitted to Irving Trust Company, as Receiver herein, a copy of which is attached to the order to show cause dated May 12th, 1931, returnable before this Court on the 26th day of May, 1931, signed by Hon. John C. Knox, United States District Judge, be rejected and disapproved by this Court. Deponent further prays [fol. 204] that the complaint herein be dismissed and the receivership vacated.

Charles H. Tuttle.

Sworn to before me this 27th day of May, 1931. Isaac Davis Hall, Notary Public, Queens Co., etc. (Seal.)

[fol. 205] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF T. M. GARRISON IN OPPOSITION; SWORN TO MAY 26, 1931; SUBMITTED AND FILED MAY 28, 1931

The appellees reserve the right, by agreement of all parties, to object on the argument of the appeal that the

affidavit of T. M. Garrison was submitted and filed after the decision was rendered by Judge Knox.

STATE OF NEW YORK,
County of New York, ss:

T. M. Garrison, being duly sworn, deposes and says:

I am Assistant Secretary of the National Surety Company. I am familiar with the above entitled proceeding.

The parties named in the foregoing affidavit of Charles H. Tuttle, oppose the acceptance and approval of the offer made by Lily White to the Irving Trust Company, Receiver, on the following grounds:

1. The petition and the papers attached thereto do not in any way indicate the possibility or probability of ultimate [fol. 206] payment in any amount to the creditors of Morris White, Inc.

2. The accountants' certificate attached to the petition shows only liabilities of Morris White, Inc. No statement is contained therein of the assets or the value thereof. Nor do the papers give any indication of the actual financial condition of the estate.

3. There is no representation which would indicate any advantage accruing to the creditors of Morris White, Inc. from acceptance of the offer. In other words, no attempt is made to show the Court, the creditors, or other interested parties, what is being relinquished in return for the notes and stock.

4. There is no concrete assurance that the offer will be fulfilled to the benefit of the creditors or that the New Company will be in as good or better position financially than was Morris White, Inc.

5. It is obviously necessary that new funds be provided in order that any readjustment plan be feasible. No source of funds is set forth in the petition or the papers attached to it.

6. It does not appear that a Receiver's report has been filed. A representative of the National Surety Company has attended every meeting of the Creditors' Committee and the only accountants' report that has been made avail-

able is that dated April 6, 1931. This report was prepared by accountants formerly employed by Morris White, Inc., [fol. 207] now the accountants for the Receiver. In order that the creditors and other parties interested may make a proper and intelligent investigation of the situation, it is necessary that a Receiver's report and a current accountants' report be filed. Unless these two documents are available to the creditors, they should not be required to consent to the acceptance of the offer. They are certainly entitled to a thorough investigation down to and including the date of the issuance of the order to show cause.

7. It has been common experience that paper settlements involving notes and the like are almost without exception unsatisfactory. This proposed offer constitutes an entirely paper transaction. Certainly some cash settlement should be required in order to indicate good faith upon the part of the offerer.

8. The length of time which would elapse under the proposed order before any liability arose, which would bind the New Company, is of grave importance. The assets of the Old Company would be in the hands of the New Company without any real control by the present creditors or their representatives during the time that Morris White, Inc. remains at the head of the new organization. Furthermore, more than six months would elapse before any liability would attach to the New Company because the first five percent note would then become due and payable.

[fol. 208] 9. No date has been fixed for the filing of claims prior to the proposed action on this offer. It is therefore impossible to determine to what extent claims will be allowed and what part of the $1,072,000 liabilities of Morris White, Inc., will be proven and allowed, or what additional liabilities over and above the said amount of $1,072,000 will be proven and allowed, and for that reason it is impossible to determine what amount in liabilities it will cost the New Corporation to purchase the assets now in existence.

10. By the provisions of the offer the New Corporation has the right to contest any claims filed against said Morris White, Inc., and the expenses of any special master appointed by the Court or any other expenses incurred in connection with the contest of any claim or claims which

may be filed against the said Morris White, Inc., or the Receiver, and such expenses shall be deemed a part of the cost of administration. It is impossible therefore at this time to determine the extent of such expenses, or in fact whether or not any moneys will be disbursed for that purpose, and the objecting creditors submit that before the offer should be accepted and approved, such expenses and disbursements should be known to them.

11. There is nothing as far as these objecting creditors have been able to find which shows whether or not the Re- [fol. 209] ceiver in its operations has made or lost money. Before any conclusion could be arrived at on this proposed offer, such a report is necessary. It may very well be, as your deponent believes, that the business of the said Morris White, Inc., was not and could not have been carried on at a profit, but in fact was carried on at a substantial loss. If such is the fact, there is nothing to indicate that the New Company would fare any better in the said business than the said Morris White, Inc., or its Receiver. For the New Company to undertake business with the additional obligation of the old indebtedness 20% in notes and 80% in preferred stock of Morris White, Inc., makes it indeed almost impossible for it to succeed, and most probably within a very short time these creditors would find themselves in a worse condition as creditors of the New Company then they now find themselves as creditors of Morris White, Inc.

12. Deponent has been informed and verily believes that much of the merchandise and other assets, including securities on hand on April 6, 1931, the date of the appointment of the Receiver herein, have been sold and/or otherwise disposed of. Deponent has been informed and verily believes that such assets were sold far below the value at which they were carried by Morris White, Inc., but due to the lack of any responsible report it is impossible to determine the value of the remaining assets.

[fol. 210] 13. From the foregoing it will be readily seen that the offer cannot be acted upon at this time for it has been impossible for these objecting creditors to determine with any reasonable degree of certainty the value of the assets of the said Morris White, Inc., the extent of its liabilities, the probable costs of administration, the probable

amount in the nature of the liabilities of Morris White, Inc., to be paid by the New Corporation for the assets of the said Morris White, Inc., the financial structure of the New Corporation and its probable responsibility, or in any other manner to intelligently determine the effect of the acceptance of any such offer as that now proposed upon the rights and probable returns upon the claims of these creditors.

Wherefore deponent prays that said offer made by Lily White, dated April 29th, 1931, and submitted to Irving Trust Company, as Receiver herein, a copy of which is attached to the order to show cause dated May 12th, 1931, returnable before this Court on the 26th day of May, 1931, signed by Hon. John C. Knox, United States District Judge, be rejected and disapproved by this Court.

T. M. Garrison.

Sworn to before me this 26 day of May, 1931. Lewis D. Baker, Notary Public, N. Y. Co. #519.

[fol. 211] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity. No. E. 59-126

VALERIA E. CORIELL, Complainant,

against

MORRIS WHITE, INC., Defendant

DECREE MAKING THE RECEIVERSHIP PERMANENT—Dated June 3, 1931

The bill in this cause having been duly filed, and the defendant, Morris White, Inc., having heretofore duly filed its answer admitting the allegations in said bill and joining in the prayer for relief, and the solicitor for said defendant having duly given his consent in writing to the entry of this decree, and an order having been heretofore and on April 6, 1931 duly entered herein appointing Irving Trust Company temporary receiver herein and providing that the

matter of making said receivership permanent and/or modifying said order be heard and determined on May 8, 1931, and due notice of said hearing having been given pursuant to the provisions of said order, and said hearing having been duly adjourned to May 25, 1931 and thereafter to May 26, 1931 and said hearing having been duly held on May 26, 1931 and there being no opposition to the making of said receivership permanent and no application for any modification of said order,

[fol. 212] It is ordered, adjudged and decreed:

1. That the said bill be sustained as a general creditors bill and as such enure to the benefit of all who may come in under the same by intervention or otherwise, as the Court may hereafter direct.

2. That the complainant and the other creditors of the defendant are without adequate remedy at law, and that said complainant is now entitled to the relief granted hereby, and that it is necessary for the protection and preservation of the respective rights and equities of the complainant and all other creditors of the defendant, that the properties and business of said defendant should be administered as an entirety in this suit through receivers to be appointed by this Court, in order that the rights and equities of all creditors, stockholders and other security holders be preserved, determined and adjudicated in this suit; and that it is necessary that a receiver of the defendant herein, and of its properties, should be appointed forthwith with the powers herein granted.

3. That the appointment of Irving Trust Company, as receiver of the defendant, Morris White, Inc., is hereby confirmed, and the said Irving Trust Company is hereby appointed permanent receiver of the defendant Morris White, Inc., and of all the properties of the defendant, real, personal and mixed, and of whatsoever kind and description including all lands, real estate and buildings, premises and appurtenances owned, controlled, leased or operated by the defendant, and all materials, supplies, merchandise, books of account, records and other books, papers and accounts, cash on hand, in bank or on deposit, things in [fol. 213] action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills and accounts receivable, rents, issues, profits, tolls and income accruing

and to accrue as well as all interests, easements, privileges, franchises and appurtenances and all assets and property of all and every kind, character and description whatsoever of said defendant wheresoever situated.

4. The receiver is authorized to take possession of all and singular said property and assets above mentioned wherever situated or found; to preserve, manage, maintain and operate said property including such property as the defendant holds, controls or operates; to use, manage and conduct the business of the defendant; to exercise the authority and franchises of the defendant; to discharge all public duties obligatory upon it; to protect and preserve the corporate franchises, privileges, property and assets and the corporate existence of the defendant; to preserve its property in proper condition and repair; to manage and operate the property according to the requirements of the valid laws of the various States in which such property is situated, in the same manner that the defendant would be bound to do if in possession thereof; to keep the property insured as it may deem advisable; to maintain the offices of the defendant in said district and elsewhere as of the date hereof; to employ, discharge and, subject to the approval of this court, fix the compensation of all officers, attorneys, and managers; to employ, discharge and fix the compensation of all superintendents, agents and other employees; to collect and receive the income, rents, revenues, tolls, issues and profits of the said property and to collect all outstanding accounts, things in action and credits due [fol. 214] or to become due or owing to the defendant and all dividends on stock and interest on bonds or other securities belonging to it; to make such payments and disbursements as may be needful and proper in its judgment in connection with any of the foregoing, and to hold and retain the net revenues of said property in such manner and to the end that the same may be applied under this order and under such orders as this court may hereafter make. The receiver shall be allowed six months from the date of this order (unless the time be extended by further order of this court) within which to elect to adopt or continue in force or to refuse to adopt or continue in force any lease or other contract not fully performed which may be included in the property of which it is appointed re-

ceiver whether made by the defendant or by any predecessor of the defendant. Such election may be made from time to time and shall be made by instrument in writing subscribed by the receiver and filed in the office of the Clerk of this court, and no conduct or user of the rights by the receiver or payments made by it, as rent or otherwise, or any other acts or omissions of the receiver within said period of six months unaccompanied by the filing of such written instrument, shall be deemed to conclude the receiver in respect of such election or be deemed to constitute an election to adopt or to continue in force any such contract, lease or agreement.

5. The receiver is authorized and empowered to institute and prosecute, within this judicial district or elsewhere in any court or before any officer, department commission or other tribunal and in its own name as receiver or in the name of the defendant as it may be advised by [fol. 215] counsel, all such actions, proceedings or suits as in its judgment may be necessary for the recovery or proper protection of said property or any part thereof and the discharge of its trusts, and likewise to appear in and defend any and all actions, proceedings or suits which may be instituted and prosecuted against it as receiver in or before any such tribunal. The receiver is further authorized and empowered, whether before or after any action, proceedings or suits in respect thereof shall have been begun and subject to the approval of the court, to compromise and settle, and, out of funds coming into its hands as receiver, pay claims and demands on all accounts accruing against it as receiver, after the date of this order and arising out of its possession, maintenance or operation of the property of the defendant which, in the judgment of the receiver, are meritorious and capable of adjustment on terms advantageous to and for the proper protection of the property in its charge as receiver. The receiver is further authorized to intervene in or become a party to such suits, actions, proceedings at law or in equity, including ancillary proceedings in State or Federal courts as may in its judgment be necessary or proper for the protection, maintenance and preservation of the property and assets of the defendant in carrying out the terms of this order.

The receiver is also authorized and empowered to appear in and conduct the prosecution or defense of any and all actions, proceedings or suits now pending or which may hereafter be brought in any court or before any officer, department, commission or other tribunal in which the de- [fol. 216] fendant is or shall be a party which, in the judgment of the receiver, affect or may affect the property of which it is appointed receiver. The receiver is further authorized and empowered, whether before or after any action, proceeding or suit in respect thereof has been begun, but subject to the approval of this court, to compromise and settle claims and demands on all matters which have accrued against the defendant or which have arisen out of the possession, maintenance and operation by the defendant of its property without regard to when the same arose, but no compromise or settlement of any such claim or demand shall be deemed to make the claim or demand so compromised or settled an obligation of the receiver or to free the claimant from making such proof of his claim as so compromised or settled before any special master hereafter appointed or otherwise as this court or any special master may request, and no action taken by the receiver in the defense of any such action, proceeding or suit against the defendant or in compromising or settling any such claim or demand against the defendant shall have the effect of establishing any claim upon or right in the property or funds in the possession of the receiver so as to alter or change any existing equities or legal rights of the parties.

6. The receiver shall maintain books of account and shall keep or cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the property of which it is appointed receiver, and shall preserve proper vouchers for all payments made by it on account thereof and shall deposit the monies coming into its hands in such banks as shall be selected by it and approved by the court.

[fol. 217] 7. The receiver is authorized in its discretion from time to time until the further order of this court, out of the funds coming into its hands, to pay all necessary expenses of conducting the business of the defendant or incident to the execution of this receivership including,

among other expenses, the wages, salaries and compensation of all officers, counsel, managers, superintendents, agents and employees retained or employed by the receiver as above provided.

8. All persons, firms and corporations having in their possession any of the property and premises of which the receiver is hereby appointed receiver, including all property of which the defendant is or may become the beneficial owner whether held by it or by other persons, firms or corporations as trustees, agents or otherwise, shall forthwith deliver such property and premises to the receiver and make such transfers, assignments and conveyances in connection therewith as may be necessary or proper, and each and every of the officers, directors, agents and employees of the defendant is hereby required and commanded forthwith to turn over and deliver to the receiver, or to its duly constituted representatives, any and all books of account, records, vouchers and papers, deeds, leases, contracts, bills, shares, bonds and other securities, accounts, monies or other property in his or their hands or under his or their control belonging to or in the possession of the defendant or to which it is or may become entitled, and each of said officers, directors, agents and employees is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by the receiver or its duly constituted representatives in conducting the [fol. 218] operation of the property and in the discharge of its duties as receiver.

9. The defendant, its officers, directors, attorneys, agents and employees and all persons claiming to act by virtue of or under it and all officers, marshals and sheriffs and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, are hereby restrained and enjoined from in any way prosecuting any suits or proceedings of any kind, nature or description against the defendant, or in any way interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the assets, goods, monies, property and premises of which the receiver is hereby appointed, or from taking possession of or in any way interfering with the same or any part thereof, or in any way disturbing the possession of the receiver or from interfering in

any manner to prevent the discharge by the receiver of its duties in the operation of the property and premises under the orders of this court.

10. The receiver shall retain the possession of the property and continue to discharge the duties and trusts aforesaid until the further order of this court and from time to time make reports of its doings in the premises, and may from time to time apply to this Court for such other and further orders and directions as it may deem necessary and requisite in the due administration of its trust.

11. The receiver is authorized to execute in its own name or in the name of the defendant, all necessary appeal, supersedeas, injunction or other bonds which may be required by law or in carrying out this order or any other orders of this court and to that end to enter into contracts [fol. 219] with surety companies as sureties on such bonds and to pay the reasonable charges of such surety companies therefor as well as any amounts they may be required to pay by reason of signing such bonds as sureties.

12. The complainant herein and also the receiver are authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become parties to such suits, actions, proceedings at law or in equity including ancillary proceedings in State or Federal Courts and in the courts of any foreign country as may be deemed necessary or proper in aid of the orders issued by this court, and to apply to any such courts for such order or orders as may be deemed necessary or proper therefor. The right is reserved to the parties hereto to apply to this court for any other instructions to the receiver and the court reserves the full right and jurisdiction to make from time to time such further orders amplifying, extending, limiting or otherwise modifying this order as to it may at any time seem proper, and in all respects and at all times to regulate and control the conduct of the receiver.

13. In case of the resignation or removal of the receiver hereby appointed and the appointment of a successor or successors to the receiver who shall so resign or be removed, all the provisions of this order shall apply to such successor without further order of this court.

14. Each and every order heretofore entered herein with respect to said Irving Trust Company as temporary receiver herein, shall be with the same force and effect applicable to said Irving Trust Company as permanent receiver herein in so far as anything still remains to be done with respect to the subject matters of such orders.

[fol. 220] 15. All questions not hereby disposed of are reserved for future adjudication, and for such purpose exclusive jurisdiction of the cause is hereby retained.

Dated New York, June 3, 1931.

Jno. C. Knox, United States District Judge.

[Title omitted]

Entry of the annexed order is hereby consented to.

Dated New York, June 3, 1931.

Nathan D. Stern, Solicitor for the Defendant.

[fol. 221] United States District Court, Southern District of New York

[Title omitted]

Stipulation of The Morris White Handbags Corporation and Morris White Submitting Themselves, etc.

The Morris White Handbags Corp. and Morris White individually and severally do each appear hereby in the above entitled action and do hereby submit themselves jointly and severally to the summary jurisdiction of this court with the same force and effect as if they and each of them had originally been parties to this action and they do each hereby consent and agree that this court may by summary order or proceeding direct or order them or either of them to do any act, deed or thing that may be required by either or both of them to be done pursuant to a decree entered herein dated the 15th day of June, 1931 and or any act, deed or thing contemplated or required to be done pursuant to the offer

made herein by one Lily White which offer is dated the 29th day of April, 1931.

The Morris White Handbags Corp., by Morris White, President. Morris White. (L. S.) Abe White, Secretary. (Seal.)

[fol. 222] STATE OF NEW YORK,
City of New York,
County of New York, ss:

On this 15th day of June, 1931, before me personally appeared Morris White, who, being by me duly sworn, did depose and say: That he resides in New York City. That he is the President of The Morris White Handbags Corp., the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, and that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Miriam G. Waterman, Commissioner of Deeds, City of New York.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

On this 15th day of June, 1931, before me personally appeared Morris White, to me known and known to me to be the individual mentioned and described in the foregoing stipulation and thereupon he duly acknowledged that he had executed the same as his act and deed.

Miriam G. Waterman, Commissioner of Deeds, City of New York.

[fol. 223] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Present: Hon. John C. Knox, U. S. D. J.

[Title omitted]

ORDER ENJOINING MORRIS WHITE FROM VIOLATING THE TERMS OF A CERTAIN STIPULATION, ETC.

This case came on further to be heard and was argued by counsel and thereupon, upon consideration thereof, the Court ordered, adjudged and decreed as follows:

First. The annexed stipulation signed by Morris White pursuant to the decree signed by Hon. John C. Knox, dated June 15th, 1931 be and it hereby is approved as to form.

Second. Morris White is hereby enjoined and restrained for a period of three years from and after the date hereof from in any way violating the terms of the annexed stipulation.

Jno. C. Knox, U. S. D. J.

[fol. 224] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

I, Morris White, hereby agree that I will, for a period of three years commencing on the date hereof, render my sole and exclusive services to The Morris White Handbags Corp. and that I will not at any time during the said period in any way carry on or be connected with, either through stock ownership or otherwise, any other business or undertaking either for my own benefit or for or with any other person, firm, association or corporation except that I shall be free to devote time and attention to and be connected with such realty enterprises as I may now have an interest in.

I hereby admit and agree that the services to be rendered by me to The Morris White Handbags Corp. are of a special, unique and extraordinary character and I hereby consent that the order of this Court may issue presently enjoining and restraining me during the said period of three years commencing on the date hereof from in any way violating the terms hereof.

[fol. 225] I hereby submit myself to the summary jurisdiction of this Court for the purpose of enforcing performance of the provisions hereof.

Dated New York, N. Y., June 15th, 1931.

Morris White. (L. S.)

CITY, COUNTY, AND STATE OF NEW YORK, ss:

On this 15th day of June, 1931, before me personally appeared Morris White, to me known and known to me to be the individual mentioned and described in the foregoing

stipulation and thereupon he duly acknowledged that he had executed the same as his act and deed.

Miriam G. Waterman, Commissioner of Deeds, City of New York.

[fol. 226] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

DECREE OF JUDGE KNOX APPROVING OFFER OF LILY WHITE—Dated June 15, 1931, being the decree appealed from

This cause came on further to be heard at this term on the order of Honorable John C. Knox, United States District Judge, dated May 12th, 1931, requiring all creditors of the defendant and any and all persons interested to show cause at the time and place therein stated why the offer made by Lily White dated April 29th, 1931 should not be accepted and approved by this Court and at such time and place to consider and act upon any other offer or offers which might then be made; and said cause was argued by counsel and thereupon, upon consideration thereof, the Court finds, adjudges and decrees as follows:

1. This Court has jurisdiction of all of the parties to this cause and of the subject matter therein involved.

2. Notice of said hearing was duly given as provided in said order of Honorable John C. Knox dated May 12th, 1931.

3. No offer other than said offer of Lily White dated April 29th, 1931 for the purchase of the assets of the de-
[fol. 227] fendant and of the Receiver's right, title and interest therein has been made.

4. The value of the assets of the defendant upon the basis of liquidation by the Receiver is substantially less than the value of such assets on a going concern basis.

5. The general creditors of defendant will realize only a small recovery upon their indebtednes if liquidation by the Receiver is had.

6. Continuance of the business under the plan embraced in the said offer of Lily White would enable the preservation of the difference between the liquidation value of the assets of defendant and the value of said assets on a going concern basis and would enable the preservation of the value of the good will of defendant.

7. Continuance of the business under the plan embraced in the said offer of Lily White would afford the general creditors a better opportunity to recover the indebtedness owing them than they would have if such assets were now to be liquidated.

8. Said offer is fair and equitable to all of the creditors of defendant and its acceptance upon the terms herein stated is in the best interests of such creditors.

It is therefore ordered, adjudged and decreed as follows:

First. The offer made by Lily White herein, dated April 29, 1931, for the purchase of all of the assets of the defendant and of all the right, title and interest of the Receiver therein, is hereby approved, subject, however, to the following conditions:

[fol. 228] (a) That the dividends that the holders of the preferred stock provided for in said offer shall be entitled to receive, as provided in said offer, shall be cumulative beginning with the dividends payable for the semi-annual period commencing January 1, 1934.

(b) That all allowances for services rendered or to be rendered in this proceeding, and all other fees incident to said offer and its acceptance, which shall be payable out of the assets of this estate, shall be subject to the approval of this Court.

(c) That Morris White file with the Clerk of this Court a stipulation, in form to be approved by the Court, whereunder he shall agree that he will, for a period of three years, commencing on the date of the signing of this decree, render his sole and exclusive services to the New Corporation referred to in said offer and that he will not at any time during the said period in any way carry on or be connected with, either through stock ownership or otherwise, any other business or undertaking either for his own bene-

fit or for or with any other person, firm, association or corporation, except that he shall be free to devote time and attention to and be connected with such realty enterprises as he may now have an interest in; and whereunder he shall agree that the services to be rendered by him to the said New Corporation are of a special, unique and extraordinary character; and whereunder he shall consent that the order of this Court may issue presently enjoining and restraining him for such period of three years from in any way violating the aforesaid terms of said stipulation; and [fol. 229] whereunder he shall agree to submit himself to the summary jurisdiction of this Court for the purpose of enforcing performance of the provisions of said stipulation.

(d) That the New Corporation referred to in said offer shall, at or before the transfer of the assets of the defendant to it by the Receiver, duly execute and deliver to the Receiver for the benefit of the United States Government a written agreement wherein and whereby the said New Corporation shall under its seal, covenant, promise and agree to pay any and all taxes legally due from Morris White, Inc. to the Government of the United States and by which agreement it shall assume and agree to pay the same, and by which agreement it shall consent that the Commissioner of Internal Revenue may assess against the New Corporation, as transferee, under the provisions of Section 311 of the Revenue Act of 1928 all taxes now assessed against Morris White, Inc. or that may thereafter be determined to have been due or be due by Morris White, Inc., and by which agreement it shall further agree that with respect to an unpaid balance of taxes due for the year 1928 the said New Corporation shall acknowledge the legality and correctness thereof and shall agree that in the event that a deficiency letter is sent to the New Corporation proposing the assessment of said taxes against the New Corporation as transferee, it will waive any right of appeal to the Board of Tax Appeals; and by which agreement it will further agree that with respect to any deficiency proposed against the New Corporation as trans- [fol. 230] feree with respect to the year 1929, that the New Corporation shall reserve the right to take an appeal from the proposed transferee assessment to the Board of Tax

Appeals, but that upon such appeal the said New Corporation shall be confined to the merits of the tax and will raise no question with regard to the Government's right to tax it as transferee, and in and by said agreement the said New Corporation shall waive any and all statutes of limitations with respect to the time within which the taxes herein mentioned may be assessed and collected against it.

(e) That the New Corporation referred to in said offer shall, at or before the transfer of the assets of defendant to it by the Receiver, duly execute and deliver to said Receiver for the benefit of the State of New York an agreement with respect to any and all taxes that may be due to the State of New York, similar to the agreement hereinbefore in subdivision "(d)" hereof provided for as to any taxes due to the Government of the United States.

(f) That Morris White and Lily White file their written consent to the entry of this decree.

Second. The Receiver herein is hereby ordered and directed to accept said offer of Lily White, subject, however, to the conditions above expressed.

Third. Upon the transfer of the assets of the defendant by the Receiver pursuant to said offer, the Receiver shall forever be released, discharged and absolved from any [fol. 231] and all liability whatsoever to the Government of the United States and to the State of New York for, by reason of, or in any way arising out of any past, present or future claim for taxes or otherwise against Morris White, Inc. and/or against Irving Trust Company, as Receiver of Morris White, Inc.

Fourth. The New Corporation referred to in said offer of Lily White may, at its option, make such settlement with any of the creditors of Morris White, Inc. whose several claims do not exceed $100, as shall be agreed upon between any such creditors and the New Corporation which settlement shall as to any such creditors be in lieu of the provision made in such offer for such creditors.

Fifth. All questions not hereby disposed of are reserved for future adjudication. For the purpose of enforcing the provisions of this decree and for the purpose of entering such further orders or decrees as the Court may hereafter

from time to time determine, the term of this Court is hereby extended and exclusive jurisdiction of the cause is hereby retained.

Dated New York, June 15, 1931.

Jno. C. Knox, U. S. D. J.

[fol. 232] CONSENTS OF THE GOVERNMENT OF THE UNITED STATES AND OF MORRIS WHITE AND OF LILY WHITE TO THE ENTRY OF THE DECREE OF JUNE 15, 1931

The Government of the United States does hereby consent to the transfer and sale by the Irving Trust Company, as receiver in equity of Morris White, Inc. of the assets of Morris White, Inc. pursuant to the offer made for such assets by Lily White, which offer is dated the 29th day of April, 1931, and

The Government of the United States does hereby consent that any decree or order that may be entered decreeing such sale by the United States District Court for the Southern District of New York, shall provide and decree that such sale and transfer of the assets of Morris White, Inc. by the Irving Trust Company as receiver in equity of Morris White, Inc. shall forever release and discharge and absolve the said Irving Trust Company as receiver in equity of Morris White, Inc., from any and all liability, if any, of any kind, nature or description for the payment by it, assessment against it or charge to it of any tax, or taxes, now due or assessed or that may hereafter be found to be due or assessable or payable by Morris White, Inc.

The foregoing consents are upon the understanding, however, that the decree or order that shall be made hereunder decreeing or ordering the said Irving Trust Company, as receiver in equity, to transfer or sell the assets of Morris White, Inc., pursuant to the offer first referred to, shall provide that upon the transfer of the said assets of Morris White, Inc., by the Irving Trust Company, as receiver, to the said New Corporation in the said offer referred to, [fol. 233] said New Corporation shall duly execute and deliver to the said Irving Trust Company for the benefit of the Government of the United States, a written agreement wherein and whereby the said New Corporation shall under

its seal, covenant, promise and agree to pay any and all taxes legally due from Morris White, Inc., to the Government of the United States and by which agreement it shall assume and agree to pay the same, and by which agreement it shall consent that the Commissioner of Internal Revenue may assess against the New Corporation, as transferee, under the provisions of Section 311 of the Revenue Act of 1928, all taxes now assessed against Morris White, Inc., or that may hereafter be determined to have been due or be due by Morris White, Inc., and by which agreement it shall further agree that with respect to an unpaid balance of taxes due for the year 1928, the said New Corporation shall acknowledge the legality and correctness thereof and shall agree that in the event a deficiency letter is sent to the New Corporation proposing the assessment of said taxes against the New Corporation as transferee, it will waive any right of appeal to the Board of Tax Appeals; and by which agreement it will further agree that with respect to any deficiency proposed against the New Corporation as transferee with respect to the year 1929, that the New Corporation shall reserve the right to take an appeal from the proposed transferee assessment to the Board of Tax Appeals, but that upon such appeal the said New Corporation shall be confined to the merits of the tax and will raise no question with regard to the Government's right to tax it as transferee, and [fol. 234] in and by said agreement the said New Corporation shall waive any and all statutes of limitations with respect to the time within which the taxes herein mentioned may be assessed and collected against it.

The foregoing agreement shall be delivered by the Irving Trust Company to the Commissioner of Internal Revenue within three days from the delivery thereof to said Trust Company.

Dated May 26, 1931.

George V. Medalie, per M. B., Asst. United States Attorney, Southern District of New York. Henry Kash, George R. Sherriff, Special Attorneys, Office of General Counsel, Bureau of Internal Revenue.

[fols. 235 & 236] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

CONSENTS OF THE GOVERNMENT OF THE UNITED STATES AND OF MORRIS WHITE AND OF LILY WHITE TO THE ENTRY OF THE DECREE

We, the undersigned, being respectively the Lily White and Morris White referred to in a certain offer made by Lily White in the above entitled proceeding, which offer is dated April 29th, 1931, do hereby consent to the entry of the foregoing proposed decree and do hereby agree to be bound by the terms thereof if said decree is entered.

Dated New York, June 12th, 1931.

Morris White, Lillie White.

Duly sworn to by Mildred Ginsberg. Jurat omitted in printing.

[fol. 237] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

NOTICE OF APPEAL FROM DECREE OF JUNE 15, 1931

The National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Hermann Loewenstein and G. Levor & Co., Inc., feeling themselves aggrieved by the order entered in the United States District Court for the Southern District of New York, on or about June 15, 1931, approving the offer made by Lily White herein dated April 29, 1931 for the purchase of all of the assets of the defendant and all of the right, title and interest of the Receiver therein and ordering and directing the Receiver to accept said offer and ordering and decreeing that the Receiver be released, discharged and absolved from liability to the Government of the United States and to the State of New York for, by reason of, or in any way arising out of any past, present or future claim for taxes or otherwise against Morris White, Inc. and/or Irving Trust Company, as Receiver of Morris White, Inc., upon the transfer of the assets by the Receiver pursuant to said

offer, do hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from said order for the [fol. 238] reasons set forth in the assignment of errors, which is filed herewith, and said National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Hermann Loewenstein and G. Levor & Co. Inc. pray that their said appeal may be allowed and that a transcript of the record of the proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, N. Y., June 16, 1931.

Yours, etc., Saul S. Myers, Attorney for Appellants National Surety Company, American Credit Indemnity Co., and London Guaranty & Accident Company, Limited. Office and P. O. address: 60 Wall Street, Borough of Manhattan, City of New York. Baldwin, Hutchins & Todd, Attorneys for Appellant Hermann Loewenstein. Office and P. O. address: 120 Broadway, Borough of Manhattan, City of New York O'Connell & Butler, Attorneys for Appellant G. Levor & Co. Inc. Office and P. O. address: 11 Park Place, Borough of Manhattan, City of New York.

[fol. 239] To Olcott, Holmes, Glass, Paul & Havens, Esqs., Attorneys for Receiver, 170 Broadway, Borough of Manhattan, City of New York; Milton C. Weisman, Esq., Attorney for the Creditors' Committee, 1440 Broadway, Borough of Manhattan, City of New York; Nathan D. Stern, Esq., Attorney for Defendant, 50 Broadway, Borough of Manhattan, City of New York; Olcott, Holmes, Glass, Paul & Havens, Esqs., Attorneys for Complainant, 170 Broadway, Borough of Manhattan, City of New York.

[fol. 240] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL FROM DECREE OF JUNE 15, 1931

An order having been entered herein on or about June 15, 1931 in the United States District Court for the South-

ern District of New York, approving the offer made by Lily White herein dated April 29, 1931 for the purchase of all of the assets of the defendant and all of the right, title and interest of the Receiver therein and ordering and directing the Receiver to accept said offer and ordering and decreeing that the Receiver be released, discharged and absolved from liability to the Government of the United States and to the State of New York for, by reason of, or in any way arising out of any past, present or future claim for taxes or otherwise against Morris White, Inc. and/or Irving Trust Company, as Receiver of Morris White, Inc., upon the transfer of the assets by the Receiver pursuant to said offer;

And National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, [fol. 241] Limited, Herman Loewenstein and G. Levor & Co., Inc., conceiving themselves aggrieved by said order, do hereby pray that an appeal be allowed to them from said order to the United States Circuit Court of Appeals for the Second Circuit, and in connection with this petition present their assignment of errors and further pray that a proper transcript of the record of proceedings and papers upon which said order was made, duly authenticated, be transmitted to the United States Circuit Court of Appeals for the Second Circuit.

National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Appellants, by Saul S. Myers, Attorney, 60 Wall Street, Borough of Manhattan, City of New York. Hermann Loewenstein, Appellant, by Baldwin, Hutchins & Todd, Attorneys, 120 Broadway, Borough of Manhattan, City of New York. G. Levor & Co., Inc., Appellant, by O'Connell & Butler, Attorneys, 11 Park Place, Borough of Manhattan, City of New York.

Order Allowing Appeal

The foregoing appeal is allowed upon filing a bond for costs in the sum of $250.00.

Dated New York, June 17, 1931.

Alfred C. Coxe, U. S. D. J.

[fol. 242] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

The National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Hermann Loewenstein and G. Levor & Co., Inc. file the following assignment of errors on their appeal from the order of the United States District Court for the Southern District of New York entered herein on or about June 15, 1931, approving the offer made by Lily White herein dated April 29, 1931 for the purchase of all of the assets of the defendant and all of the right, title and interest of the Receiver therein and ordering and directing the Receiver to accept said offer and ordering and decreeing that the Receiver be released, discharged and absolved from liability to the Government of the United States and to the State of New York for, by reason of, or in any way arising out of any past, present or future claim for taxes or otherwise against Morris White, Inc. and/or Irving Trust Company, as Receiver of Morris White, Inc., upon the transfer of the assets by the Receiver pursuant to said offer:

[fol. 243] 1. The Court erred in continuing the administration of the estate herein as an equity cause after the evidence submitted to it showed that the defendant was apparently insolvent within the meaning and intent of the National Bankruptcy Act of 1898.

2. The Court erred in not judicially determining, when requested so to do, whether the defendant was thus insolvent within the meaning of the National Bankruptcy Act of 1898.

3. The Court erred in not thus determining whether the defendant was thus insolvent within the meaning of the National Bankruptcy Act and in not thereupon and forthwith transferring the cause to the Bankruptcy side of the Court, where the fees and expenses are regulated by the Acts of Congress or desisting from further acting in the matter on the Equity side of the Court.

4. The Court erred in attempting to compel dissenting creditors to accept, in payment of their claims, the unendorsed promissory notes of the defendant to the extent of 20% of their claims and capital stock in a new corporation to be formed by the defendant, to the extent of 80% of their claims while permitting the defendant to retain all available cash and other quick assets for the payment of fees and expenses and for working capital, in the new corporation.

5. The Court erred in refusing to hold that upon the evidence a court of equity should not continue the receivership herein.

6. The Court erred in refusing to grant the application and motion of these objectants to vacate the receivership.

7. The Court erred in refusing to grant the application and motion of these objectants to dismiss the bill of complaint in this action.

[fol. 244] 8. The Court erred in denying the application of these objectants for further time within which to investigate the so-called offer.

9. The Court erred in denying the application of these objectants that they be given an adequate opportunity through their counsel to examine witnesses under oath concerning the so-called offer.

10. The Court erred in approving terms which deprived these objectants of a prompt and fair distribution in liquidation.

11. The offer as approved by the Court is tantamount to a confiscation and destruction of the just claims of these objectants in violation of their rights under the Constitution of the United States and especially under the Fifth and Fourteenth Amendments thereto.

12. Said order and the determination upon which it is based are contrary to the law.

13. Said order and the determination upon which it is based are contrary to the evidence.

14. The Court erred in holding that it had jurisdiction of all the parties to this cause and of the subject matter therein involved.

15. The Court erred in holding that the value of the assets of the defendant upon the basis of liquidation by the Receiver is substantially less than the value of such assets on a going concern basis.

16. The Court erred in holding that the general creditors of defendant will realize only a small recovery upon their indebtedness if liquidation by the Receiver is had.

17. The Court erred in holding that continuance of the business under the plan embraced in said offer of Lily White would enable the preservation of the difference between the liquidation value of the assets of defendant [fol. 245] and the value of said assets on a going concern basis and would enable the preservation of the value of the good will of defendant.

18. The Court erred in holding that the continuance of the business under the plan embraced in said offer of Lily White would afford the general creditors a better opportunity to recover the indebtedness owing them than they would have if such assets were now to be liquidated.

19. The Court erred in holding that said offer is fair and equitable to all of the creditors of defendant and its acceptance upon the terms therein stated is in the best interests of such creditors.

20. The Court erred in ordering, adjudging and decreeing that the offer made by Lily White herein dated April 29, 1931 for the purchase of all of the assets of the defendant and of all the right, title and interest of the Receiver therein be approved subject to certain conditions contained in said order.

21. The Court erred in ordering and directing the Receiver to accept said offer of Lily White subject to said conditions.

22. The Court erred in ordering, adjudging and decreeing that upon the transfer of the assets of the defendant by the Receiver pursuant to said offer the Receiver shall forever be released, discharged and absolved from any and

all liability whatsoever to the Government of the United States and to the State of New York, for, by reason of, or in any way arising out of any past, present or future claim for taxes or otherwise against Morris White, Inc. and/or against Irving Trust Company, as Receiver of Morris White, Inc.

[fol. 246] 23. The Court erred in making the Receivership herein permanent.

24. The Court erred in retaining jurisdiction as a court of equity.

25. There was no evidence before the Court upon which it could properly base its decision.

26. The Court erred in rejecting the objections of the appellants herein.

27. The Court erred in refusing to reject and disapprove said offer made by Lily White.

Wherefore National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Hermann Loewenstein and G. Levor & Co., Inc., pray that said order of the United States District Court for the Southern District of New York entered herein on or about June 15, 1931 be reversed and that said National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Hermann Loewenstein and G. Levor & Co. Inc. be granted such other and further relief as may be just.

Dated New York, June 16, 1931.

National Surety Company, American Credit Indemnity Company, London Guaranty and Accident Company, Limited, Appellants, by Saul S. Myers, Attorney, 60 Wall Street, Borough of Manhattan, [fol. 247] City of New York. Hermann Loewenstein, Appellant, by Baldwin, Hutchins & Todd, Attorneys, 120 Broadway, Borough of Manhattan, City of New York. G. Levor & Co. Inc., Appellant, by O'Connell & Butler, Attorneys, 11 Park Place, Borough of Manhattan, City of New York.

[fol. 248] Citation, in usual form, omitted in printing.

[fols. 249 & 250] Clerk's certificate to foregoing omitted in printing.

[fol. 251] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1931

Nos. 170, 171

VALERIA E. CORIELL, Complainant-Appellee,

v.

MORRIS WHITE, INC., Defendant-Appellee; IRVING TRUST Company, Receiver, Appellee; Michael Hollander et al., Constituting a Committee of Creditors of Morris White, Inc., Appellees; National Surety Company, American Credit Indemnity Company, London Guaranty & Accident Company, Ltd., Hermann Loewenstein, G. Levor & Co., Inc., Appellants.

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

OPINION—Decided November 16, 1931

An order was entered making permanent a receivership, and another order entered thereafter approving an offer of purchase of the assets of Morris White, Inc., under a plan of reorganization of the corporation. The National Surety Company, American Credit Indemnity Company, London Guaranty & Accident Company, Limited, Hermann Loewenstein, G. Levor & Co., Inc., creditors, appeal. Decree reversed, with directions.

Saul S. Myers, Baldwin, Hutchins & Todd, and O'Connell & Butler, all of New York City (Charles H. Tuttle, Saul S. Myers, and Raymond O'Connell, all of New York City, of counsel), for appellants.

Nathan D. Stern, of New York City (Norman M. Behr, of New York City, of counsel), for Morris White, Inc.

Milton C. Weisman, of New York City (John S. Sheppard, Joseph R. Margulies, and Milton C. Weisman, all of

New York City, of counsel), for appellees Michael Hollander et al.

Olcott, Holmes, Glass, Paul & Havens, of New York City (Joseph Glass and Jerome Weinstein, both of New York City, of counsel), for appellee Irving Trust Co., receiver, and for complainant-appellee.

MANTON, Circuit Judge:

On April 6, 1931, a creditor, as assignee of a banking institution, filed a bill in equity against Morris White, Inc., a New York corporation, engaged in the manufacture of hand bags, pocketbooks, and leather goods, seeking a receivership. The bill alleged that the corporation was solvent but unable to meet its current debts, and that there was danger of destruction of its property by a forced sale, and prayed for the appointment of a receiver. The cor- [fol. 252] poration filed an answer admitting the allegations of the complaint and consented to the appointment of a receiver.

The appointment was made April 6, 1931, and powers conferred upon the receiver to continue the business of manufacturing and selling its products. Thereafter, on June 3, 1931, an order was entered making permanent the receivership. Immediately a plan was prepared for reorganization of the corporation, and proceedings were had before the court for approval of the plan. The creditors, appellants here, objected to the plan proposed, but on June 15, 1931, the court entered an order approving an offer for the purchase of all the assets of Morris White, Inc., which, pursuant to the plan of reorganization, were to be, and later were, turned over to a new corporation organized for the purpose of continuing the business. Morris White was the principal stockholder of Morris White, Inc. His wife, Lily White, made the offer for the assets of the corporation as part of the plan of reorganization. It provided that the offerer would organize a new corporation under the name of Morris White Handbags, Inc., with an authorized capital of 10,000 shares, of which 1,000 was to be common stock, without par value, to be issued for such consideration as the board of directors might deem advisable. The remaining 9,000 shares were to be preferred stock, of the par value of $100 per share, to be issued by the new corporation in extinguishment of 80 per cent of the proved and al-

lowed claims of the creditors and 20 per cent was to be paid by notes, to the creditors who proved their claims, the first series due on January 2, 1932, the second series due July 2, 1932, the third series due January 2, 1933, and the fourth series due July 2, 1933. These notes were non-interest-bearing and given without security.

At the time the bill was filed, Morris White, Inc., had about 245 creditors who were owed about $1,072,000.30. Among its creditors were the United States government for taxes, $80,000; New York state for taxes, $57,000; banks partly secured, $440,000; and merchandise creditors, $400,000. The assets which were appraised by a creditors' committee, on a going concern basis, were as follows: Merchandise inventories listed at $1,241,208.09; $5,000 in cash; $300,000 in accounts receivable; and $4,000 in listed securities. Of the $300,000 accounts receivable, approximately $250,000 was pledged as collateral for bank loans. The creditors' committee's appraisal of the merchandise inventoried was $717,000, on the basis of a going concern value, and $357,000 on a forced sale in liquidation. The leathers listed in the accountant's statement at $316,000 were appraised by the committee's appraisers at a value of $255,000 on a going concern basis, and $75,000 at a forced sale. Frames for hand bags, stated by the accountants to be $161,000, with a net worth of $80,000 on the basis of a going concern value, were appraised at $25,000 on a forced sale basis. Machinery and equipment, if sold at auction, would bring $10,000, whereas, if retained to carry on the business, would be worth $200,000. There was also an item of loans amounting to $1,700,000 to the Morris White Holding Company, a real estate corporation, owning three large hotels in the city of New York, upon each of which there were first mortgages. It was established in the court below that Morris White, Inc., consistently made profits averaging about $500,000 per year, which demonstrated a good will not valued.

The argument in support of the plan of reorganization is based upon the theory that the business in the past has been profitable and the best use of the assets could be made by continuing the business, that profits are realizable in the future, and that Mr. White's management would make it possible to rehabilitate the business and pay the creditors. For three years of his management, White was to be paid

not more than $60,000 per year as a salary, to be fixed by the board of directors. The common stock is allotted to White. The plan provides for five directors. The preferred stock is placed in the name of two voting trustees for a period of ten years, one of such trustees to be designated by a member of the creditors' committee representing the merchandise creditors, and the other to be designated by the members of the creditors' committee representing the bank creditors. Because of this, voting trust certificates were issued for 80 per cent of the indebtedness. It was provided that the voting trustees elect two directors, one from the banking creditors' committee, and one from the merchandise creditors' committee; otherwise the preferred stock was not to vote. The management of the corporation is left to the control of the common stockholders. The board of directors is given exclusive right to employ executives of the new corporation.

[fol. 253] The appellants object to the plan, complaining that the assets of the corporation are given back to Mr. White, the owner and manager of Morris White, Inc., without obligation to pay or repay except in redemption of preferred stock and the notes referred to. It is argued that the company failed because of his management of Morris White, Inc., that there is no new money advanced to carry on the business, nor have the creditors been offered cash in part or whole for the value of their claims. White might receive a salary of $60,000 a year. The banks, as secured creditors, have, in addition to their security, the preferred stock and notes just as unsecured creditors receive. Counsel for the creditors' committee is to receive an unnamed sum to be agreed upon between them and the new corporation. The indebtedness of $158,500 taxes due the federal and state governments is assumed by the new corporation.

The appellants are creditors as follows: National Surety Company, American Credit Indemnity Company, and London Guaranty & Accident Company, Limited, insured accounts owed by Morris White, Inc., and claims have been filed against them, some of which have been paid, in the sum of $92,138.15. At least one has been paid amounting to $19,329.42; Hermann Loewenstein is a creditor for $5,600, and G. Levor & Co., Inc., for $4,500. The plan of reorganization has the approval of the creditors' committee, representing claims amounting to $589,000 out of the total of

$1,072,000, as well as the tax creditors, the United States government, and New York state and the bank creditors. The court below, in approving the plan, said:

"I agree that the proposed reorganization is more or less of an attempt by Mr. White to lift himself by his bootstraps, in that there is here no capital with which to finance the new concern, save such as he thinks may be received on his business record from others who are favorably disposed toward him. All of us know, unfortunately too well, the present condition of business. Mr. White is hopeful; whether he is over-enthusiastic or not, I do not know; but certain it is, I think, that quite as much is to be anticipated from such effort as he might make to rehabilitate himself, as is to be had from liquidation. * * * If he can 'deliver the goods,' to use the vernacular, he should, of course, be well paid for his services; and it would be most gratifying, I am sure to everyone, if, at the end of the summer he could carry out his expressed hope of giving his creditors a check for the 20 per cent. I trust that he may be able to do so."

And, in approving the offer, the court modified the plan so as to make dividends on preferred stock cumulative, to make fees allowed subject to the approval of the court, and ordered that Mr. White file a stipulation to the effect that for three years he will render exclusive services and will not, in any way, engage in any competing business.

The transfer of the property for this offer was without public sale, and competitive bids were not sought or submitted. The order in this modified form, and under these circumstances, for the transfer of the property pursuant to the plan of reorganization, was opposed by the appellants.

The question presented to us is whether these minority creditors are obliged to accept the plan, taking stock and notes in place of cash, and be contented to wait the outcome of this new venture in the hope that some day the preferred stock will be redeemed and payment of their notes made. Have the appellants been deprived of their rights as creditors by this order?

Assets of an insolvent commercial corporation have long been recognized as a trust fund for the payment of its creditors. It has likewise long been recognized that contract obligations may not be impaired by the courts. Muhlker v. N. Y. & Harlem R. R., 197 U. S. 544, 25 S. Ct. 522, 49 L. Ed.

872. Private property may not be taken in violation of contract obligations. A creditor may not be compelled to accept, in payment of his claim against a private corporation, paper which is not legal tender of the United States (Constitution of the United States, art. 1, § 10). Any other tender is not a valid tender. Farmers' & Merchants' Bank v. Federal Reserve Bank, 262 U. S. 649, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A. L. R. 635. If the order appealed from does not pay the debts of the corporation to the extent of its financial ability to pay, it wipes out the contract obligations by which credit was extended to the corporation. The court has not the power to direct a creditor to accept stocks of a private corporation in payment of its commercial obligation. The assets of the corporation may not be used as a fund for the benefit of the debtor rather than a creditor. Commercial [fol. 254] obligations, such as an extension of credit, must be imposed by the contracts of the parties with the legal obligations flowing therefrom. It must be left to the decision of the creditor whether he will accept a new form of security in payment of his debt, and thus embark upon a new venture, or insist upon the rights which are his because of the contract which he entered into and by which he extended credit. These principles are supported by judicial decision. In Northern Pacific Ry. v. Boyd, 228 U. S. 482, 33 S. Ct. 554, 561, 57 L. Ed. 931, Boyd obtained a judgment against the railroad. While it remained unsatisfied, a reorganization plan was executed by which the Northern Pacific Company, at foreclosure sale, purchased a debtor railroad. The reorganization contract between the stockholders and bondholders of the old company made no provision for Boyd and he claimed that he had no notice that the stockholders were to retain an interest in the new company. The Circuit Court of Appeals (177 F. 804) affirmed the decree subjecting the property of the Northern Pacific Company to the payment of his judgment. The Supreme Court, holding that the creditors were entitled to be paid before the stockholders could retain the property for any purpose whatever, said:

"This conclusion does not, as claimed, require the impossible, and make it necessary to pay an unsecured creditor in cash as a condition of stockholders retaining an interest in the reorganized company. His interest can be preserved by the issuance, on equitable terms, of income bonds

or preferred stock. If he declines a fair offer, he is left to protect himself as any other creditor of a judgment debtor; and, having refused to come into a just reorganization, could not thereafter be heard in a court of equity to attack it."

But the court pointed out that, if no tender was made to him to come in as a creditor, his rights against the property in the new company subjected it to full payment of the debt.

In Kansas City Ry. Co. v. Central Union Co., 271 U. S. 445, 46 S. Ct. 549, 551, 70 L. Ed. 1028, which involved the sale of railroad property under the foreclosure of a mortgage, the court referring to the rule that, where it was necessary in order to protect all interest for stockholders and bondholders to enter into an agreement, any arrangement made must be executed so as not to secure the subordinate rights of stockholders at the expense of prior rights of creditors, said:

"This doctrine is the 'fixed principle' according to which Northern Pacific Ry. Co. v. Boyd, 228 U. S. 507, 33 S. Ct. 554, 57 L. Ed. 931, declares the character of reorganization agreements must be determined, and to it there should be rigid adherence. But, as that opinion states, this does not require the impossible, and make it necessary always to pay unsecured creditors in cash before stockholders may retain any interest whatever in the reorganized company. By way of illustration it further pointed out, that such creditors can be protected 'by the issuance, on equitable terms, of income bonds or preferred stock.' And we now add that, when necessary, they may be protected through other arrangements which distinctly recognize their equitable right to be preferred to stockholders against the full value of all property belonging to the debtor corporation, and afford each of them fair opportunity, measured by the existing circumstances, to avail himself of this right."

In Temmer v. Denver Tramway Co., 18 F. (2d) 226 (C. C. A. 8), judgment creditors appealed from a decree fixing the manner and amount of their participation in the reorganization plan. The creditors were to receive preferred stock of the new company to the extent of their claims allowed. The stockholders and bondholders of the old company were given new bonds and stock in the reorganized company. The creditors contended that the distribution was

unfair and that they were entitled to be paid in cash out of a fund which the receiver had accumulated because he had been ordered by the court to refrain from paying interest on the old bonds. This fund went to the new company for working capital. All but 3 per cent of the bondholders, 3 per cent of the stockholders, and 30 per cent of the unsecured creditors approved the plan. The court approved the plan, as well as the provisions for unsecurred creditors, and said that the creditors were given dollar for dollar in preferred stock of the new company. The stockholders received new stock, paying $10 per share in addition to surrendering each share of old stock. It was held that the creditors need not be paid in cash before the stockholders could retain an interest in the new company. New funds were necessary in the plan, and it was impossible to obtain them unless stockholders were permitted to come in with their contribution. The funds [fol. 255] out of which the creditors claimed payment belonged to the old bondholders, as accrued interest, and it was held they could use it as they saw fit in the plan of reorganization. Merchants' L. & T. Co. v. Chicago Rys. Co. (C. C. A.) 158 F. 923; Phipps v. Chicago, R. I. & P. Ry. Co. (C. C. A.) 284 F. 945, 28 A. L. R. 1184.

But the instant case does not involve the powers of a judge sitting in equity merely to pass on the fairness of a plan of reorganization in a case where there has been a public sale or other provisions for payment to creditors who object to the plan of the liquidation of the fair value of their claims in cash. In reorganizations, the courts have refused approval of plans of reorganization where cash payment is not offered. Geddes v. Anaconda Mining Co., 254 U. S. 590, 41 S. Ct. 209, 65 L. Ed. 425; In re Northampton Portland Cement Co. (D. C.) 185 F. 542; In re Sale of Assets of First Natl. Bank of Florence (D. C.) 6 F. (2d) 905; In re J. B. & J. M. Cornell Co. (D. C.) 186 F. 859; In re J. B. & J. M. Cornell (D. C.) 201 F. 381; In re Prudential Outfitting Co. (D. C.) 250 F. 504. In such cases, the courts should not require the creditor in a reorganization plan to accept, over his objections, stocks or notes in lieu of his claim for cash, even though there may be prospects of payment from the new and willing debtor. Harding v. Amer. Tobacco Co. (D. C.) 14 F. (2d) 168.

The compelling motive in an equity receivership is to save the business. Where a corporation is faced with financial

difficulties, which seem but temporary, and require careful handling with promise of success in reorganization, it has long been the practice of a court of equity to lend a helping hand, having in mind that at the end of the receivership there shall be a reconstructed and saved business. But such good motive may not deprive a creditor of the rights created under the direct obligation resulting in the indebtedness. As Justice Brewer said in Merchants' Loan & Trust Co. v. Chicago Rys. Co. (C. C. A.) 158 F. 923, 927: "A party insisting upon those rights is probably, or even certainly, bound to suffer loss, yet while he insists it [the court] must protect him in his insistence. There is no wide discretion vested in the chancellor which permits him to disturb contract rights—rights of property." Kneeland v. American Loan Co., 136 U. S. 89, 10 S. Ct. 950, 34 L. Ed. 379; Gay v. Hudson Elec. Co. (C. C. A.) 184 F. 689; Odell v. Batterman (C. C. A.) 223 F. 292.

In Habirshaw Elec. Co. v. Habirshaw Elec. Co., Inc. (C. C. A.) 296 F. 875, 43 A. L. R. 1035, the court merely held that, where a creditor deposits his claim with a reorganization committee, such deposit constitutes a binding contract, and a creditor may not withdraw his claim except in accordance with his contract obligations.

It is well established that, where a court of equity takes into its possession the assets of an insolvent corporation, it will administer them on the theory that they belong to the creditors and shareholders rather than to the corporation itself. U. S. v. Butterworth Corp., 269 U. S. 504, 46 S. Ct. 179, 70 L. Ed. 380. We are unable to find authority for the claim of the appellees that the court has power to compel a creditor of any kind to accept stocks or promises to pay in the future in full extinguishment of his claim, without being afforded the alternative of receiving his proportionate share of the proceeds of the conventional sale of the property in cash.

There was no public sale and therefore no competitive bidding. Apparently what took place below was that an offer was made by Mrs. White for all the assets. The creditors' rights thereto were wiped out. They were directed to take preferred stock and notes. By the acceptance of the offer, the new corporation obtained the assets of the old Morris White, Inc. No new money or other assets were pro-

vided. If the transaction be termed a sale, it was not a public sale. It was a private sale approved by the court. Moreover, the reorganization plan and the method of carrying it out deprived the appellants of the opportunity which might have been afforded to them of questioning the assignment of accounts which were given as collateral to the banks. The appellants should have full opportunity to question any preference that may have been made. The banks should not collect on the security which has been pledged as collateral, and, in addition thereto, receive preferred stock. They may agree to accept preferred stock and notes for such sums as they do not realize upon the sale of the collateral up to the amount of their respective claims, but no more. One of the evils of this reorganization plan may be the retention of this collateral by the bank creditors in [fol. 256] disregard of the rights of unsecured creditors to share in the assets of the corporation.

An outstanding circumstance is the willingness of the majority of creditors to proceed with this reorganization, expressing the view, as they did in the court below, that the rehabilitation of White's business gave the best promise for the payment of their debts. They willingly consented to the transfer of all the corporation's assets, deferring the payment of their debts for a sufficiently long time to warrant the expectation of payment of the notes and redemption of the preferred stock. But the minority creditors, appellants, insisting upon the right to share immediately in the proceeds of a forced sale of the corporation's assets, have dissented. Their rights must be protected. They are ordinarily entitled to a public sale with competitive bidding, the assets to be sold to the highest bidder. They have a just claim to their proportionate share of the price which would have been realized at such sale after deduction of administration expenses. If a court of equity can protect these rights and at the same time carry out the wish of the other creditors who favor the plan of reorganization, it should be done. The reorganization plan has been put into operation, and creditors, excepting the appellants, are content to have it proceed. We think both may be protected.

The appellants will be fully protected by having an appraisal of the value of their respective claims made before a master, to be appointed, who will take an account of the

assets and liabilities of Morris White, Inc., ascertaining the value of the assets as if sold at a public sale. If the appellants establish that preferences have been granted by pledging as collateral the accounts to the banks, these preferences should be regarded as invalid for the purpose of the calculations and the amount of the accounts so pledged considered as part of the assets. In this way, from the ascertained sum of money that would have been realized, had a sale taken place, the appellants may be awarded their aliquot shares of the assets. This sum must be paid in cash, or, at the option of each of the appellants, the preferred stock and notes offered to them may be valued as of the date the reorganization plan became effective, and that sum paid in cash to them or either of them. Geddes v. Anaconda Co., 254 U. S. 590, 41 S. Ct. 209, 65 L. Ed. 425; Jones v. Missouri-Edison El. Co. (C. C. A.) 203 F. 945. Thus the appellants will be placed in a position of having awarded them what would be the result if a distribution of the proceeds of a sale of the assets of the corporation had been made. If payment is not thus made in cash, the several amounts which appellants are found entitled to may be collected by a sale of the property transferred to the new corporation. This enables the minority creditors, in a practical manner, to obtain cash in payment, or part payment of their indebtedness. It will afford co-operation with the majority in carrying out the plan of reorganization. Kansas City Ry. v. Central Co., 271 U. S. 445, 46 S. Ct. 549, 70 L. Ed. 1028. There will thus be preserved to appellants their right to payment in cash, and it removes the objection they properly raise. The remaining creditors, satisfied with the plan, are then free to proceed with its operation.

With this disposition, the order of June 3, 1931, making the receivership permanent, will be affirmed, and the order of June 15, 1931, will be reversed with directions to the District Court to enter an order in conformity with this opinion.

The costs of this appeal including the printing of both records, may be taxed against the appellees.

[fols. 257 & 258] Clerk's Certificate to foregoing omitted in printing.

[fol. 259] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

Appeal from the District Court of the United States for the Southern District of New York

DECREE—Nov. 23, 1931

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, reversed, with costs and cause remanded to the District Court for further proceedings in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 260] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 727

NATIONAL SURETY COMPANY et al., Petitioners,

vs.

VALERIA E. CORIELL, MORRIS WHITE, INC., et al.

ORDER ALLOWING CERTIORARI—Filed May 16, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.